

*Law. P. H. H. H. H.*

# R E P O R T

OF AN

## ACTION FOR A LIBEL,

BROUGHT BY

DR. BENJAMIN RUSH,

AGAINST

WILLIAM COBBETT,

In the Supreme Court of Pennsylvania, December term,  
1799, for certain defamatory publications in a  
newspaper, entitled *Porcupine's Gazette*,

OF WHICH THE SAID

WILLIAM COBBETT WAS EDITOR.

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[TAKEN IN SHORTHAND BY T. CARPENTER.]



Philadelphia :

Printed by W. W. Woodward, No. 17, Chestnut Street.

1800.



*The following charge was delivered at the close of the pleadings, by the Hon. Judge Shippen.*

GENTLEMEN,

**T**HIS is an action brought by the Plaintiff against the Defendant for writing, printing and publishing divers scandalous libels, to defame and villify him. The defendant has pleaded that he is not guilty:—his counsel, however have acknowledged the publication of the papers, which, otherwise, it would have been incumbent on the plaintiff to prove. The question, therefore, will be, whether they amount in law to defamatory libels or not?

By the law and practice in England, in the case of libels, the only task of the jury is, to judge of the fact of publication, and the truth and fair application of the innuendos. The court, as judges of the law, reserving to themselves the sole power of deciding whether the paper amounts to a libel or not: But in this state, by the special directions of our constitution, the jury possess the power of judging both of the law and fact, under the direction of the court.

A libel is defined by the law, to be the malicious defamation, expressed either in printing or writing, or by signs or pictures, tending to blacken either the memory of one who is dead, or the reputation of one who is alive, or to expose him to public hatred, contempt or ridicule. This offence may be punished, either by indictment at the suit of the commonwealth, or by a civil action at the suit of the party injured. When the prosecution is by indictment, the court only are to direct the punishment; but in a civil suit, the damages are to be assessed solely by the jury.

The charges laid against the defendant in the declaration, are various; but they may be reduced in substance to the following.—That he repeatedly calls the plaintiff a quack, an empyric; charges him with intemperate bleeding, injudiciously administering Mercury in large doses in the yellow-fever; puffing himself off; writing letters and answering them himself, stiling him the Sampson in Medicine; charging him with murdering his patients and slaying his thousands, and tens of thousands.

The counts laid in the declaration is full proved by the publications which are certainly libellous. In what manner do the defendant's counsel repel these proofs? Not by justifying the truth of the matters charged against Dr. Rush, which on the contrary they have repeatedly acknowledged to be false, but by analyzing the several allegations in the newspapers, and from thence drawing a conclusion that no intentional personal malice appears, which they say is the essence of the offence.—Malice rests in the heart, and is only to be judged of by the words and actions of the party; the words themselves import malice, and in that case the proof lies on the defendant to shew the innocence of his intentions; if he has done **THAT** to your satisfaction, you will acquit him; but as this is chiefly founded on the allegation that the attack was meant to be made on Dr. Rush's *System*, and not on the *Man*; it unfortunately appears that not the least attempt is made to combat the Doctor's arguments with regard to the system itself, but the attack is made merely by gross scurrilous abuse of the Doctor him-

self: Added to this, one of the witnesses proves a declaration made by the defendant, that if Dr. Rush had not been the *Man* he should never have meddled with the *System*.

Another ground of defence is of a more serious nature, as it leads to an important question on our constitution—it is said that the subject of dispute between the plaintiff and defendant was a matter of public concern, as it related to the health and lives of our fellow citizens, and that by the words of our constitution, every man has a right to discuss such subjects in print. The liberty of the press, gentlemen, is a valuable right in every free country, and ought never to be unduly restrained; but when it is perverted to the purposes of private slander, it then becomes a most destructive engine in the hands of unprincipled men; the utmost purity and integrity of heart, is no shield against the shafts and arrows of malice, conveyed to the world by printed publications. Verbal slander may be frequently very injurious, but slander writing or print being more generally disseminated and more durable in its effects, is consequently infinitely more pernicious and provoking. Our state constitution of 1790, contains certainly very general words with relation to the right of a citizen to print his thoughts and offer them to the consideration of the public, but it at the same time guard against the generality of the privilege, by expressly declaring, that every person availing himself of the liberty of the press, *should be responsible for the abuse of that liberty*; thus securing to our citizens the invaluable right of reputation against every malicious invader of it.

Printed publications attacking private character, is considered with great reason by the law as a very atrocious offence, from its evident tendency to the breach of the public peace—if men find they can have no redress in our courts of justice for such injuries, they will naturally take satisfaction in their own way, involving perhaps their friends and families in the contest, and leading evidently to duels, Murders, and perhaps to Assassinations.

The principal subject of consideration with the jury will be, what damages they are to assess. On this subject you are the almost uncontrollable judges—it is your peculiar province:—The court have indeed the power to order a new trial where damages are excessive; but in cases of torts and injuries of this kind, the law books say the damages must be so outrageously disproportionate to the offence, as at first blush to shock every person who hears of it, before the court will order a new trial.

Every one must know that offences of this kind have for some time past too much abounded in our city; it seems high time to restrain them—that task is with you, Gentlemen. To suppress so great an evil, it will not only be proper to give compensatory, but exemplary damages; thus stopping the growing progress of this daring crime—at the same time, the damages should not be so enormous as absolutely to ruin the offender.

I hope no party considerations will ever have place in this court in the administration of Justice—and I intreat you, Gentlemen, to banish them, in considering this subject, entirely from your breasts.

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The Jury, after an absence of two hours, brought in a verdict in favor of the Plaintiff of *Five Thousand Dollars*.

# IMPORTANT TRIAL,

IN THE SUPREME COURT OF PENNSYLVANIA.

Doctor Benjamin Rush, }  
versus } December term, 1799.  
William Cobbett. }

ACTION on the case for a Libel was brought in the autumn of 1797, by the Plaintiff against the Defendant, for certain defamatory publications which appeared in a newspaper entitled "Porcupine's Gazette," of which COBBETT was the Editor.

The publications stated in the Declaration to be libellous were as follow, viz.

*From Porcupine's Gazette, September 19th, 1797.*

## MEDICAL PUFFING.

"The times are ominous indeed,

"When quack to quack cries purge and bleed."

Those who are in the habit of looking over the Gazettes, which come in from the different parts of the country, must have observed, and with no small degree of indignation, the arts that our remorseless *Bleeder* is making use of to puff off his preposterous practice. He has, unfortunately, his partizans in almost every quarter of the country. To these he writes letters, and in return gets letters from them: he extols their practice, and they extol his; and there is scarcely a page of any newspaper that I see, which has the good fortune to escape the poison of their prescriptions.—Blood, blood! still they cry more blood!—In every sentence they menace our poor veins. Their language is as frightful to the ears of the alarmed multitude, as is the raven's croak to those of the sickly flock.

Among all these puffs, I do not recollect a more shameless one than the following from Dr. TILTON.

*Extract of a letter from Dr. Tilton, of Wilmington, to Dr. Rush, dated September 12.*

"We have had repeated instances of your fever at this place. The infection has generally been taken in Philadelphia, I am not acquainted with any instances where the contagion has been received

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“ at Wilmington, but at Newcastle and Newport there are unequivocal examples of the contagion being received from those who brought it from the city.

“ In the treatment of the fever we use *copious* blood-letting in the beginning, and active *mercurial* purges. I have conceived however, that mercury is useful, not merely as a cathartic, but as a *specific* against all kinds of contagion.—There is no contagious disease in which its use is not acknowledged: not only small-pox, measles, dysentery, &c. but scarlatina and influenza yield to its specific virtues. You probably remember as well as I, that it was given with advantage in the hospital and camp fever. In short, I have established it as a maxim, to give mercury as soon as I know a disease to be contagious.”

This Dr. Tilton is a kind of a puritan; a sour wry-faced incorrigible democrat. He has the pride of Lucifer himself, and, to me, it is astonishing that he should have condescended to become the trumpet, the underling, the mere barber-surgeon of the master-bleeder.

The mercurial purges too, Dr. Tilton must break forth in praise of! Mercury is good for every thing that is contagious! Is good for sanctuulotism Doctor? If it be, in the name of goodness, take a double dose of it twice a day, till it has wrought a cure.—Dr. Rush, in that emphatical stile which is peculiar to himself, calls *Mercury* “ the *Samson* of medicine.” In his hands and in those of his partizans it may indeed be justly compared to *Samson*; for, I verily believe they have slain more Americans with it, than ever *Samson* slew of the Philistines. The Israelite slew his thousands, but the Rushites have slain their tens of thousands.

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From *Porcupine's Gazette*, September 25th, 1797.

MR. PORCUPINE.

SIR,

I find my rascally hostler has forgot the frequent injunctions I have given him, to mind his business, and has deserted his curry comb and brush, for the pen and ink.

John is a very good man in his way, and understands his business well, particularly the art of bleeding horses; when I proposed to my brethren to commence business as physician, I had an eye on John's abilities as a bleeder, and I hinted to him my intention. Would you believe it Mr. P— that the rascal after reading my essay in your paper, purchased “ *Dr. Rush on the Yellow Fever*,” and has been studying ever since, to my great loss and mortification. And now the wise illiterate thinks he can commence business for himself. But let him remember that “ *Ne sutor ultra crepidem*,” *The cobbler must not go beyond his last*. I observe he is half a physician already, for he has got the *Coccytes scribendi*—and has obliged the public with his first medical essay.

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Not content with deserting my service, he appears desirous to prejudice the public against me, and my brethren, asserting in strong terms, that we are enemies to the *noble science of blood-letting*: This is abominable and contrary to the truth. For I am, and shall be *no-lens volens*, an advocate for the practice, and it is my creed that it will cure all diseases—as our good allies the French have clearly proved in their practice,—I have also another reason for commencing the business of a physician; In fact, the villainous liquors my wine merchant obliges me to supply my guests with, has lately caused in the latter severe and harsh expostulations, and, as I am a conscientious man, I wish to follow a quiet business, and I prefer that of the lancet, because you know Mr. P. *dead men never tell tales*.

As I have now cautioned your readers, and I conceive the public against my rascally hostler, I have to observe to you, that a meeting of our brethren was held at my tavern last evening; when the business I had recommended was very warmly approved; and a college was determined to be held the ensuing week, for the purpose of taking out our diplomas.—And it was unanimously agreed to request, Dr. J. Redman Coxe to favor us with a prefatory oration in praise of the noble science of blood-letting. We also voted a serious expostulation to the public, on their prejudices against the new practice addressed to Dr. Rush, the great patron of the art.

As our resolves will appear in your paper, I think it unnecessary to state more at present, than that we determined not to advertise the particular taverns where compounds may be had; as we believed each of our brethren was well qualified in that respect. The superior merits of some, who sell stale porter, dead cider, &c. will be soon discovered by their respective patients.

I have already got my carriage newly painted, and have engaged a *French* hostler, whose merits and *sang froid* in the use of the lancet are I believe, unrivalled, for I believe he was an *eleve* of Robespierre.

I have also hired a few nurses, whose abilities I am well acquainted with. They will never desert their patients, as I have engaged to supply them constantly with excellent gin and have also promised them the pillage of such of my patients who may be determined to die.

I am, Sir,

Yours, &c.

A TAVERN KEEPER.

N. B. I request your interest with some of your brother printers who appear to me to have, if not the yellow fever, a very irritable bilious complaint.

From

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*From Porcupine's Gazette, September 26, 1797.*

### RUSH AND TILTON.

*Wilmington, (Del.) September 22, 1797.*

FRIEND PORCUPINE,

In reading thy paper of the 19th instant, I took notice of a curious observation made on a certain rye faced incorrigible democrat, one of the medical puffers. To complete the story, I will give thee a short sketch of a curious fact (which happened some time past in this place) concerning this self consequent Mercurial ghost.

There was a woman travelling from the head of Elk to Germantown, and on her way her carriage was turned over, she thrown out, and very much hurt. She has since returned from Germantown through Philadelphia, and made a stop at an inn, in this borough;—the woman overcome with fatigue and a cold she had taken, felt herself a little indisposed.

This crooked faced Quack was called in. As soon as he saw her, he said he must take some BLOOD, and I suppose, if he had not got frightened, a good dose of mercury would have ensued.

But fortunate for the poor woman, he happened to push up her sleeve a little, and discovered a bruise on her arm, which she received in her fall from the carriage. Alarmed at the appearance of her arm, he asked her if she had been to Philadelphia, the reply was, yes: he immediately pronounced her complaints to be the *Yellow Fever*, made his escape and has not seen her since. The good woman has recovered and proceeded on her way home. There now lies a person, a small distance from the town, in a house (built for the reception of persons coming here with the contagion) who he pronounced to have the yellow fever. But, who in fact, has nothing but the common ague.

Thine, &c.

A. B.

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### ANOTHER PUFF.

In Brown's paper of last evening appeared another of our "potent quack's" brothered PUFFS.

It was "a letter from Dr. Rush to a correspondent in Newberry-Port," giving his old account of the yellow fever, and concluding with a *dragged-in* compliment to a Mr. Coates.—Upon the very first glance, it is evident that this letter was sent to Newberry Port, on purpose to be published there, and then to be sent back here to make its appearance among us through the channel, or rather through the SINK, of the quack-ridden Philadelphia Gazette!—All this bustle of letters and addresses, and prescriptions, in the name of Dr. Rush, is intended



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intended to make the duped world believe, that he is the Oracle at Philadelphia, and that all the other physicians are mere glister-pipe Dicks under him.—It is a cheap mode of acquiring fame, which he learned from the crafty old hypocrite, Franklin.—I wonder what Coates it is that the Doctor has got in tow; Some well meaning man, I dare engage, whom he *makes use of* as a *step in the ladder* of his ambition, at the same time that he expresses his contempt of his intellects, by making his court to him in a strain of vulgar flattery.

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*From Porcupine's Gazette, September 29, 1797.*

### A PUFF,

Equal to Dr. Rush's.

We congratulate our *fellow creatures*, in having it in their power to get relieved from the most unpleasant complaints incident to human nature, such as the scurvy, gout, rheumatism, evil, ulcers, and other disorders arising from *impurities of the blood*, indigestion, &c. by taking *Spilsbury's Antiscorbutic Drops*, a medicine well known upwards of twenty-six years for having performed more extraordinary cures than any other ever invented, and whose reputation has reached the remotest corners of the universe, every nation bearing grateful testimony of its eminent virtues; how happy therefore is it for the inhabitants of this island that they can supply themselves with a medicine, which, should they travel to any part of the globe, will secure them from the fatal consequences that too often attend the above complaints.

[*There's for you, Master Sangrado! Beat that if you can.—As to the IMPURITIES OF THE BLOOD, I am sure, you have a more effectual remedy than brother SPILSBURY.*]

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December 13, 1799, this case was brought to trial before *Shippin, Yates and Smith*, Justices of the Supreme Court, and the following named gentlemen were sworn and affirmed a special Jury:

Isaac Paxson, William Jolly, Thomas W. Armat, Joseph S. Lewis, Isaac Austin, George Thompson, Jacob Sperry, Benjamin F. Garrigues, John Taggart, Jacob Reele, William Roberts and Archibald Birmingham.

Plaintiff's Council, Messrs. Hopkinson, Moses Levy, Ingersol and Lewis.

Defendant's Council, Messrs. Rawle, Harper and Edward Tilghman.

MR.

MR. HOPKINSON,

As Counsel for the Plaintiff opened this cause, in the following  
address:

*Gentlemen of the Jury,*

**I**T is my duty to open this cause to you on the part of the plaintiff, Dr. Rush. In discharging this duty I shall beg leave to extend it somewhat beyond its usual limits in ordinary cases. I shall not be content with merely reading the declaration to you, and stating the points of evidence by which it will be maintained; but shall also take the liberty of opening to you the views and dispositions with which this action has been brought, and some of the leading principles on which it will be supported.

The action now before you is an action of slander, brought by Dr. Benjamin Rush, who has long been a distinguished ornament of our city, against William Cobbett, the printer and publisher of a newspaper under the name of *Porcupine's Gazette*. It will easily be imagined that no slight cause could bring a man of Dr. Rush's character into this, or any other competition, with a man of William Cobbett's character.—Dr. Rush is as well known for his peaceful habits and his amiable manners, as William Cobbett is for his disocial malignant disposition and inveterate hate—While the one may well be termed the friend of humanity, the other has labored hard to be considered, *hostis humani generis*—It is not then to indulge a fondness for controversy—It is not to gratify unsocial, litigious or revengeful dispositions, for no such find a place in his heart, that Dr. Rush now presents himself before the tribunal of his country, demanding justice for barbarous and unprovoked injuries, and requiring that protection of an honest reputation which the law guarantees to every citizen—He comes here impressed with high duties—TO THE LAWS OF HIS COUNTRY he owes a duty, that they shall not be violated;—TO HIS FELLOW CITIZENS he owes a duty to bring to punishment, and, if possible, suppress an abandoned and dangerous offender, who tramples over truth, decency and character with a tiger's stride, and assaults with venomous fury the most sacred bands of social order and peace; the most endearing ties of private life and happiness—TO HIMSELF AND HIS FAMILY, he owes a duty of *protection*, which should never be disregarded—let the father of a family assert the honor and purity that it descend not as a shame upon his children.—Let the husband preserve the tender feelings of a wife from insult, and her affections from the deep wounds of public reproach.

On this high and dignified ground, Dr. Rush stands before you—He appeals to his country in firm confidence in its justice, and it is your province, Gentlemen, to administer that justice—you are to ascertain the security in which a citizen of Pennsylvania holds his good name, and to sanction or to check the ravages of defamation—This day we are to know whether character is deemed a valuable and sacred possession among us, in which we have a perfect and inviolable right,

or

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or whether it is to be the mere sport and play-thing of malicious ridicule and vulgar wit, the undefended victim of assassinating malevolence ; we are now to know if honor and virtue are known and respected here ; if a fair and unimpeached life, of above fifty years, spent in important public services, and the constant exercise of private virtues, has a good claim to protection from premeditated ruin, and shall not sue for redress in vain.

The courts of justice are so often harrassed with actions of slander, brought for trifling or revengeful causes, originating in passion, and ending in repentance,—founded on the quarrels of children, or the unmeaning intemperance of harmless old women, that they have fallen into some kind of disrepute, and lost much of that importance, which the law and good reason attaches to them, when properly founded.—In fact, it seldom happens, that the kind of slander which the law so seriously contemplates, occurs—The offence is so enormous, so destitute of palliation or defence, so unworthy, so low and detestable, the penalty so exemplary, that few men are found regardless enough of social order and decency, or sufficiently cutraged and audacious to commit it. But when such a case does occur, it rises in terrible pre-eminence above the multitude of actions for defamation which throng the dockets and disgrace the remedy.—When an offender is found hardy enough to assault the sacred fortress of reputation, and strive to prostrate it in the dust ; hardy enough to brave the vengeance denounced against him by God and man, he should be struck with dreadful and speedy justice, and stand a blighted picture of ruin and infamy, an awful lesson to depravity and vice.—Such an offender, we assert, is William Cobbett ; and if such an offender we shew him to be, we trust that such a punishment awaits him.—

[Here Mr. Hopkinson read the declaration.]

You observe, Gentlemen, that the controversy between the plaintiff and defendant in this cause, does not originate in any dispute about property ; it is a question of CHARACTER. And, as in its essence, it differs from suits on questions of property, so must it in its mode of treatment, and in its objects of enquiry—While the defendant be permitted to a certain extent to scrutinize and investigate the character and conduct of the plaintiff (to which investigation Dr. Rush most cheerfully offers himself) we shall also claim a right of examining or observing upon, to a certain extent, the character and conduct of the defendant.—His *character*, as far as relates to his occupation of a printer and publisher ; and his *conduct*, as far as relates to the general management of his newspaper, are surely proper objects of observation at least—Nothing can be more evident ; nothing more reasonable. If the general character of his press is that of decency, of tenderness for reputation, of candor, liberality and truth, and he has now, as if by accident, fallen into personal defamation, it will certainly be urged by his counsel, as a powerful extenuation of his offence, as a strong argument to induce you to believe that this single deviation is error, and not crime, is ignorance and not malignity—The plea would most justly, hold a powerful influence over your judgments : and  
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although in the strict eye of the law, the only question in this action is on the specific charge of slander, exhibited in the declaration, yet the construction of those charges—the *quo animo* or disposition with which the offensive paragraphs were written and published, will depend much on the general character and conduct of the defendant as a printer, and will have a strong influence over the verdict of an equitable jury.

Permit me gentlemen one further explanation—Parties have in our country, become wrought up to such illiberal fury, that every action of a man's life, from the most important to the most obscure and trifling is traced to party motives and party principles—His attachments and his enmities—his connexions in business or otherwise, nay almost the color of the cloth he wears, and the species of diet he feeds on, are ascribed to his party and political principles—This is an unhappy state of things—Were I of the party to whom it has *happened* the defendant has opposed himself—I should expect that all I shall now or ever say against this man, would by many of my fellow-citizens, perhaps by you gentlemen, be deemed to be the mere vengeance of party spirit, the unmanly gratification of political hatred—But my opinions of this man have ever, even from the commencement of his extraordinary career, been the same; and are now, as they always have been, honest, consistent, and conscientious—My political character depends not in the slightest degree, upon his recommendation or his censure—I have had both; I have regarded neither—Doubtless his dark and virulent spirit prepares some attack, which his insufferable arrogance informs him will be formidable and destructive to lawyers, court and jury, that shall dare to *do him justice*. For myself I declare, if the declaration be necessary, that there is not in the bounds of creation that thing so feeble or so vile that I should hold it in greater contempt than the resentment of William Cobbett; and, I will answer that you will not be driven from your duty or your oaths, by a fear of being placed on his *black list*. He has indeed, the unquenchable and vindictive spirit of an inquisitor, but wanting all power, it is harmless and contemptible—The ridiculous vanity of this man, and his ignorance of his *true situation* in this country and of the *kind of value or use* that has been put upon him, has lead him into an opinion that his voice is the voice of fate, either with regard to public measures and character, or to private reputation. This however is an error which it lies with the public to correct; and they will find their interest and their honor, deeply concerned in doing it speedily and effectually. God forbid that my country should have sunk so low, that an opposition to such a wretch as this, will be deemed unfriendly to our government. When tempests agitate the ocean to its foundation, and rock it in convulsions, numerous noxious animals are thrown up, which would otherwise never have seen the light; so in a troubled state of things, wretches are cast up from the very dregs and slime of the community, who, in more happy times, would have lived and rotted in obscurity.

The attack made on Dr. Rush is of the most deadly and violent kind that malice could invent, or abandoned depravity execute—He is  
accused



accused of murder, or destroying the lives of his fellow citizens, in a time of dreadful calamity—It is then fair and necessary to enquire—

1. What was the conduct of Doctor Rush during that calamity—has it merited reproach or applause—If the former, the offence of W. C. is extenuated, though not justified; if the latter, it is aggravated beyond all example.
2. What inducement or motive had W. C. for this attack—If a desire to inform the public mind on an interesting subject, his offence is extenuated, but not justified—if private and political malice, it is aggravated.

Dr. Rush's reputation is not confined to the narrow circle of his patients, nor his applause to the clamours of old women and nurses. His fame has spread as extensively as our commerce. He has added a fresh and a blooming laurel to the head of American genius—he has done much to rescue the American name from obloquy and contempt, which some of the proud Philosophers of Europe would cast upon us, ranking us as inferior to themselves in the order of beings. From the East Indies and from the West—from almost every part of Europe, he has received honors and compliments; and we are different from all the people on the face of the earth, if these honors reflect not some pride and some pleasure into our breasts.—This participation in the honors and fame of our countrymen is coeval with the existence of the passions of men, and he that does not feel it must want a social temper, and the true spirit of patriotism. Nor, has the private character and deportment of Dr. Rush forfeited that esteem which his public services and fame should command. Where is the man whose dispositions are more mild, whose temper is less virulent, whose affections, more warm and sincere.—From my soul, I believe him to be among the most unoffending and most benevolent of mankind; so that in the wide range of creation you cannot find too beings more unlike each other than Dr. Benjamin Rush and William Cobbett—Even when, day after day, this vile source of falsehood and pollution, vomited forth the blackest venom of slander upon his name, he stood like a suffering martyr, and dipped not his pen in the gall of controversy.—And yet it is known that Dr. Rush can write—his pen has often been drawn in the service of his country, never to blacken the name of his neighbour or wound the feelings of innocence. He did not even wipe away by contradiction the filth with which he was covered; determined that the hands of his country alone shall either cleanse him from these foul aspersions, or sink him deeper in disgrace.

When pestilence and death, walking hand in hand, swept away the people of Athens with the besom of destruction, the immortal Hippocrates threw himself undaunted into the midst of the danger, and endured the extremes of fatigue and distress to assist and deliver his perishing fellow citizens. How like this was the conduct of Dr. Rush in the memorable and dreadful year 1793. He then stood foremost and almost alone to encounter and arrest the ravages of death. Hundreds of our fellow citizens, sinking under the unparalleled calamities of poverty and disease, sought relief as well from the christian charity and benevolence

benevolence of his heart as from the powerful application of his skill. If there be any who sought his attention in vain ; if there be any who were repelled with unfeeling insolence or mortifying neglect, let them declare it. For those who received from him the relief they sought, we ask them not to speak, it is not the applause of men or the tears of the grateful that he requires. The voice of conscience speaks a louder tone of applause, which the approbation of his God will render eternal—but, gentlemen, let us not forget the days of difficulty and distress, they have returned and may again return and utter dreadful reproach to the ungrateful. This flourishing city, where health, business and pleasure gave joy to every heart and ornamented every countenance, became at once silent as a wilderness, the solemn the joyless habitation of disease and death ; no longer the noise of business was heard through our streets, or the sprightly notes of mirth, but the dull sounds of the heavy hearse, and the lamentations of the wretched struck an uneasy terror to the soul “ making night heidous.” The day and the night were now the same. The rising sun brought no comfort, no joy to the afflicted, nor night its usual rest ; all was sadness ruin and despair ; commerce bent her sails for happier ports ; your warehouses no longer received or distributed the wealth of nations ; the temples of God were closed, and it was dangerous to meet together even to implore from divine mercy an issue to our sufferings—WHERE THEN WAS DR. RUSH ? Where was this man, and HOW WAS HE EMPLOYED, who has been treated as a very cut throat, or a worthless and abandoned vagabond, who disgraces the community which tolerates his existence ? Need I tell you where he was—God forbid that you should have forgotten—separated from a large and an amiable family, and exposed daily to a separation from them forever, he seemed at once to have forgotten the husband, the father, and all those tender ties and exquisite sensibilities which form the happiness of such a man, and to have contemplated himself only as a citizen of Philadelphia. He seems to have lost sight of the duties he owes to his family, and to have been devoted to the more godlike duties he owes to his country.

Twice he found himself languishing on the bed of sickness, and gasping at the gates of death, distant from his family, and almost deserted by every friend—Scarcely had he recovered strength to move, when he resumed his dangerous duties ; and often did he totter into the infected chambers of the sick, when he could not ascend to them without stopping to recover his exhausted strength.—It was for the poor and helpless too that he thus exposed himself to destruction. The rich had generally fled—How like is this to the conduct of Hypocrates—I wish I could add how like is Philadelphia to Athens. Athens heaped honors and wealth on her Physician and his posterity ; but contumely and defamation have been the reward of ours. What are the rewards that Dr. Rush is justly entitled to, ought not perhaps to be decided by his friends or enemies ; but nearly all must agree that he has not deserved the treatment he has received from William Cobbett. It has been strangely suggested by some (for this suit has been a subject of pretty general conversation and concern) that Dr. Rush's character is

too well known and established to be injured by the attacks of Cobbett, who is not worth his serious attention, and therefore he should recover no damages in this action. I am sure I think as highly of Dr. Rush, as any of those who would in this manner palliate the conduct of Cobbett, or weaken the claims of the plaintiff to redress. But, Gentlemen, there are few characters so pure and so impenetrable as to receive the constant, unceasing attack of malicious slander, exerted in every possible form and to every possible point, without stain or injury. Of a physician this is most emphatically nice. His reputation is a fabric delicate as air, the slightest gust of popular prejudice or caprice dissipates it, even suspicion destroys it; if he is distrusted he is ruined. This notion that the purity of the object attacked is to justify or lessen the crime of the assailant, is quite novel in morals and in law. Is the virtue of the injured, to be the defence of the injurer? Should it not rather be the protection of the just? Have you a daughter of spotless virtue and discretion? Is it then no offence to proclaim her a prostitute? are you unquestionably upright and honest? Is it therefore no offence to publish you a swindler and a thief, while the real prostitute and the convicted thief would be entitled to exemplary damages? —Why, gentlemen, doctrines of this sort are so absurd, so repugnant to every sentiment of justice and propriety, that the honest heart shrinks from them as from its bane? Let us see to what they would lead us. To slander a man is simply no offence; to vilify a man pre-eminently wise and useful, is something better than merely an offence; and to blaspheme the all pure and perfect God must be highly meritorious. But to return to Dr. Rush's ability to withstand the blows that have been aimed at him: It is not gentlemen this single paragraph or that one that carries with it the deadly weight, and brings the intended victim to the ground. It is a regular concerted system of defamation, an uninterrupted and persevering attack of calumny and scurrility, in every form which they can assume. Sometimes it is made under some dark, mysterious paragraph, and sometimes in the open language of denunciation. Now fear is alarmed with a bold assurance of danger, and now ridicule is exacted by the point of a jest. Thus a net is thrown out for every weakness, passion or prejudice that is afloat in the community, and few escape the entanglement. This, gentlemen, is what scribblers call, *writing a man down*, and is a most abominable species of assassination.

Besides, although Dr. Rush's actual loss from the defendant's conduct must necessarily have been very important; yet it is not the only consideration in the case that calls for heavy damages. The utility of these actions is not merely to reimburse the pecuniary injury a man may have sustained; to *pay* for his character, which can have no price, but to correct vice, and give countenance to virtue; to confine the licentious within proper bounds; and give the worthy and good citizen a safe and respectable station; to preserve the *peace* and *purity* of society.—The second question then arises:—

From what motive or inducement has William Cobbett made his flagitious attack—was it a desire to inform the public mind?

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The nature of the publications shew this was not the case. They do not consist of any examination of the system and principles of Dr. Rush's practice, but merely of violent and low personal abuse.

But, gentlemen, although the entire want of every thing like a just cause of attack on Dr. Rush would justify us and you in ascribing a base one to it, yet we shall not rely even on this legal and reasonable presumption. We shall be able, by the light of living testimony to trace the low malice of the defendant to its true source. We shall trace it to personal hatred, grounded on political prejudice. You may remember, that some time past, an eulogium was delivered, by the appointment and direction of the Philosophical Society, on the late David Rittenhouse; that this eulogium was delivered by Dr. Rush. Here, then originated the first excitement of resentment in the mind of Cobbett against Dr. Rush. We shall shew you, as I am instructed, that, from that moment he determined on the attack. Long he waited for an opportunity to gratify this groveling resentment, and discharge the venom that rankled in his heart.

From the testimony of a respectable witness we shall also shew you that the defendant did not himself pretend that his attack on Dr. Rush was commenced with a view to give useful information to the public on an interesting question, to correct any errors in Dr. Rush's system or treatment of his patients, or dispense any public benefit whatever; but that he avowed to be *personal against the Dr. and not against his system*, that he avowed his ignorance whether the system was right or wrong, and declared he should have said nothing about it, had any other man than Dr. Rush brought it forward. Where, then, can be the defence, were the justification, where the apology for the infamous slanders he has heaped upon a worthy and honor able citizen? Does he not stand the most barbarous, the most wanton, the most impudent defamer that has ever existed?

Slander is a headlong torrent that rushes over the land—like a mighty water rolling from the mountain's top, it spreads and strengthens as it goes—the palace and the cottage are involved in its common ruin—nothing is so high that it cannot reach it, or so mean that it will not descend to it—let not the great promise themselves security in the unblemished dignity of their characters, nor the humble expect safety in their obscurity—like death it comes to every man's door. What is there so pure, or what so sacred that it has escaped this cormorant of defamation. From the highest magistrate to the meanest vagabond nothing has been secure; all men and all nations have been called with an equal tone of authority to the bar of his reproach, and every law, liberty and institution has undergone his *modest* animadversions. He has assumed a haughty and tyrannical jurisdiction over every thing public or private; political or domestic; religious or moral, not only within the United States, but in every quarter of the globe. His arrogant vanity is as disgusting as his crimes are detestable. William Cobbett is indeed a phenomenon even in the courts of defamation.

He may look back on the endless list of his predecessors in the offices of scandal who have, at different times, infested society, and, although, he will find many superior in *talents, learning and wit*, he will discover few equal in *boldness and scurrility*. His opinion is the great law from whence there must be no appeal; his assertion, the high authority



*liberty*, from whence there must be no enquiry. Despotic dogma usurps the place of just knowledge, and the most loathsome vulgarity is offered as a substitute for wit. The eye of decency can seldom read his pages without offence, and virtue turns from them with indignation and disgust. Is there a species of editorial pollution that has not blackened them? If there be, it is because it has escaped the laborious industry, and acuteness of this *strange man*.

There is, gentlemen, no subject of political enquiry that has excited more anxiety among the people of every free country; there are few subjects that have employed more able pens, or received more frequent discussions in every possible form of argument than the *Liberty of the Press*—and yet perhaps, there is no subject now more remote from a *general understanding* or settled opinion. It is so difficult to draw the just and safe line between the proper use and the insufferable abuse of this liberty; so difficult to fix its legal or its reasonable bound; to say “thus far shalt thou go and no farther;” to say, here flow the wholesome waters of Liberty, and there begins the poisoned torrent of Licentiousness; that all that has been said and I fear all that will ever be said, on the subject, has but little effect to produce an unity of sentiment, or establish the point sought after. Another reason may be offered for the universal uncertainty and disagreement on this subject.

The discussion is conducted, the inferences are drawn, and the judgment is formed more by the passions and particular interests, than by the just reason of the several advocates and enquirers. While this shall continue to be the case, and while the passions and interests of men shall continue to drive them to different wishes and different objects, no coalition can be hoped for on this subject. But, gentlemen, this mighty uproar about the liberty of the press, and all the violence, declamation and invective that it has excited, touch not the case of *private slander*. By a common principle of self preservation, by a common principle of unquestionable justice, by a common appreciation of the value of character, and by the dictates of honesty and sound policy, all men have agreed that this admits of no defence. No writer, no declaimer, however mad with popular enthusiasm, has yet been wild and absurd enough to claim or defend a right of wanton abuse of his neighbors character. The dispute has been how far, and in what manner, public men in their public capacities, and public measures in their public tendency, are to be investigated and reproached at the bar of the public, through the medium of the press. But no dispute has ever been had upon the sanctity of private reputation and happiness.—No question has arose, whether a vindictive enemy may, with wanton falsehood and ungovernable rage, attack, through the press, the character of the object of his hate; may distort truth and invent falsehood, may set every engine of malice, ingenuity and ridicule to work to render him contemptible and detested; to scatter misery through an unoffending and amiable family, and bring them down from a fair station in society to contumely, wretchedness and want. Yet such have been the views and wishes of William Cobbett in this case, and  
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to accomplish them none of his vast resources in this way have been unemployed.

I profess myself, gentlemen, a zealous and devoted friend to the *true liberty of the Press*. I view it as a lofty citadel from whence the people overlook the conduct of their governors; encourage, approve and reward the virtuous, and crush the daring effects of ambitious oppression or unprincipled designs. The wicked stand appalled before it, and the good flourish and rejoice. But, permit me to say that the safety of this citadel in this country at least, is more endangered by the treachery, malignity and arrogance of pretended friends, than from the violence of open foes. Such friends, possessing themselves of this important station, and protected under its sacred walls, use this high privilege for the most abandoned purposes. That which was intended for the public good, is the prostituted instrument of private malice—that which was erected for the salvation of a people, becomes the foul avenger of a villain's wrath. That thunder which stood ready to assert violated rights, and protect the liberties of millions, is pointed with deadly vengeance against the domestic happiness of some virtuous family, the private peace of some deserving citizens. Nay, against the very inclosures of social order and harmony and the ramparts of religion and morality? Is this the Liberty of the Press? Are these the ends for which it was instituted and preserved? You must not, gentlemen, be made to believe that the Liberty of the Press is attacked or endangered, whenever a scurrilous printer is prosecuted and brought to justice for some malicious and profligate attack upon an unoffending neighbor. These are truly the only means of preserving it pure, valuable and undefiled. By these means only will it continue to be a blessing—to be a terror to evil doers, and a praise and protection to those that do well. Let not the fair fabric be defiled; and by becoming the base engine of malignant persecution, become the just object of universal detestation. Preserve it in its exquisite beauty; its elegant proportions, and its impenetrable strength; and let not its foundations be sapped by treacherous guardians, till its high walls totter and fall. These high toned and pretended sons of Liberty, who bawl incessantly about the Rights of the Press, while they blacken it with their detestable crimes; who tell you it is sacred, while they are plunging it in disgrace; who under its name and sanction practice the most abandoned licentiousness, and invade our most important and valuable rights, must be laid low, or they will work a fatal ruin to the liberty they abuse; pretending to be its friends, they are its most deadly foes; pretending to protect, they inevitably destroy it. To preserve the Liberty of the Press from ruin and contempt it is necessary to bring down these wretched impostors. While frequent prosecutions against the Press, are some times the refuge of tyranny shrinking from investigation, it must be remembered, they may also be the symptoms of approaching extreme depravity and licentiousness among a people. When the latter is the case, the evil is to be corrected by exposing every atrocious offender, to severe and exemplary punishment, and not by shielding him under the Liberty of the Press. To make defamation dangerous and detestable, is the only mode of preserving the press from detestati-

on. Let this liberty and defamation never be classed together! Ask me, what are the evidences of the decay of religion and morals among a people, of the approaching disregard of every social law and duty, of the entire prostration of truth, honor and honesty, of the tottering state of government, of the bursting of the social compact and of the consequent scenes of blood-shed, revolutions and warring chaos, and I will tell you, it is a boundless multiplication of licentious libels, a public encouragement of malicious defamation, and unpunished ravage upon reputation.

When good character loses its value and protection in society, when it is fallen into ridicule and contempt, why should any man labor to obtain it? It is *excess* that is the great destroyer of all things: human excess of health sometimes shatters the human frame, and bursts the strong ligaments of life. Excess of despotism has humbled the most powerful monarchs; and excess of liberty has subverted the firmest republics. Seldom has a tyranny been overthrown by the mere spirit of liberty among the people, unless first roused, assisted and goaded to action by the insolent and insufferable oppression of overgrown power, and never has the freedom of a republic been destroyed by the bare strength of the arm of the usurper, unless favored by those disorders, distractions and consequent weakness and disunion, which the corruption and licentiousness of liberty never fail to produce. Permit me, gentlemen, to make a few more observations on this liberty of the press. Is not this at once absurd and insulting to an intolerable degree? a printer will spend months and years in unprovoked, unceasing exertions to destroy the character and fortune of a fellow-citizen, to bring him into public hatred and contempt, to overturn every fair prospect in life, and reduce him and his family to poverty and disgrace; but *this* is not *persecution*; it is *liberty*, the *sacred liberty of the press*. If the oppressed individual seeks redress for his insufferable injuries, and endeavors to avert the threatening ruin; if he calls upon his slanderer in the most decent and dignified manner to support his charges; if conscious of innocence, and martyrs under injuries, he determines even to put his character in issue against his vile and lurking defamer; this indeed is *persecution*, the whole country is alarmed and inflamed; the liberty of the press is attacked; the great palladium of our rights, the sacred and unalienable pledge of freedom is threatened with immediate destruction; and the poor innocent, unoffending printer, loudly demands universal sympathy, and public protection from *persecution*. Can we listen a moment to such impudent absurdity and nonsense, to such a horrid perversion of the eternal dictates of truth and justice? If Dr. Rush is guilty of persecution in applying to the tribunal of his country for the justification of his character, and the redress of his wrongs; if he is guilty of persecution when he calls his assassin to open, fair and dignified ground, to the courts of justice of his country, making the great issue between them TRUTH, and consenting to stand or fall, to be justified or disgraced by this infallible arbiter; when he puts this issue on trial before a jury of his fellow-citizens, just and impartial—I say, if this is *persecution*, what term, what language is vile, is base, is indignant enough to express a just sentiment  
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of the conduct of a printer who attacks his neighbor with deadly weapons, condemns and destroys him, unheard, undefended; who, without remorse, will plant thorns in the hearts of unoffending children, and a tender wife, and tear down, with ruthless hands, the peace and prospects of an extensive, respectable and amiable family.

It is equally astonishing and absurd in this man, so loudly and so frequently to assert, that the American press is the most tame, humble and abject in the world, while his own daily publications, and those of his competitor, the *AURORA*, give so flat a contradiction to the assertion; while, from those presses there incessantly issues a pestilential deadly vapor of the most low and vile defamation; and these things are not only winked at by the law, but too much applauded by the people.—But the press of Great Britain, he says, is more free and unshackled. If it be so, so much the greater the curse. But the fact is not so. Their restraints on this most abominable species of licentiousness are wholesome and severe. I say, it is false, that the just and desirable liberty of the press is more cherished or protected in England, or any where else, than here. I say this to defend the constitution and laws of my country from the groundless assertion. We know what the constitutional liberty of the press is here, and do not our books inform us what it is in England? Is not page after page and volume after volume loaded with private actions and public prosecutions for libels and slanders? Do not we see the most exemplary punishments inflicted for them, and very properly too: and are not the rights of reputation a special object of protection with English law. Is not defamation resisted and depressed, as a most dangerous foe to the order and existence of society, tending to the introduction of the most enormous crimes, the fatal excesses of revenge. Indeed, does not Mr. Cobbett himself applaud the severity and vigilance of the English courts of jurisprudence in punishing the publisher of Paine's infamous libel on religion and morality; and in the same book boast of the licentious latitude which printers enjoy in England—Do we not know that men have there expiated on the pillory, exposed to the ferocity and insult of a mob, the offence of libelling; and most justly and deservedly too: Have we not seen a member of the House of Commons, driven from his seat and not only so, but declared ever after ineligible for the offence of libelling. And I rejoice that he was so. To discountenance and punish even to excess, indecent obscene and defamatory publications is the best proof of the virtue and purity of a people, and of the energy and stability of their government.

I shall not, Gentlemen, detain you much longer! I feel that I have already trespassed too much on your patience. But suffer me to turn your attention for a moment to the situation of the plaintiff in this cause. He has a tender and affectionate wife, who fully participates in all his misfortunes, injuries, and mortifications. The blow that pierces his character and happiness, opens a deep wound in her heart, tearing with remorseless rage all the fine fibres and delicate sympathies of conjugal love. Have these no value, that they shall be the wanton sport of base malignity? He has an amiable and valuable young family



mily just rising into that age of nice feeling and generous sensibility, when the reputation of a parent, they have ever deemed immaculate (if this be weakness, where is the virtuous child that is not weak?) is peculiarly dear and interesting! and when every attempt to blacken or degrade it, corrodes their feelings with poisonous rancor, shocks with new horror, and excites a boundless indignation. Are these things of no importance, that they shall be done with impunity? What a scene for a husband and a father? By what crimes has he merited these things? But manlier passions swell, agitate and enflame the breasts of his sons.—They burn, they burst with indignation, rage, revenge, drive them headlong to desperate deeds, accumulating woe on woe. With difficulty the prudential advice, the parental command of the father restrain their fury—With difficulty they are prevented from taking immediate vengeance on their cruel oppressor—Be patient my children, said he, I am deeply injured, but the laws of my country offer me justice, and point out the road to redress. It is tardy, but it is certain and ample. Delay may be painful to you, but the duties of a good citizen require it. This suit then, Gentlemen, and the hope of the justice that you will administer, may have been the guardian angels of the defendant.

*To conclude*—Volumes need not be unfolded to inform you, Gentlemen, what slander is. It is unnecessary to disgorge our libraries upon you to shew what forms of words have or have not been deemed actionable by other courts. Ask the honesty of your own hearts, consult the light of your own understandings, and let it be answered whether in a state of civilized society, where the actions of men are amenable to government and to law; where protection is pledged to the unoffending, and redress to the injured, an outrageous member of that society, in the mere sport of wanton wickedness, may attack with malignant and unprovoked virulence, the peace of another; may destroy that good reputation, which the unceasing merit of many years, and the labors of countless hours of toil, which, indeed, a whole life spent in public service and unblemished private virtue, had accumulated; may diffuse mortification and pain through an amiable family; may snatch from the father the bread with which he would feed his children; may be guilty of these enormities, may pursue and glory in them, and owe no redress to the bleeding victim of his malice, no expiation to the insulted justice of the country—The honesty of your hearts will swell with virtuous indignation against a wretch so lost and vile; the light of your understandings will readily inform you, that the government and law where such things are tolerated, must very soon fall into merited contempt; that the society where they prevail, hangs but loosely together, and must speedily dissolve into anarchy and misery. If the injured seek in vain, for redress; if the promised protection to our lives, property and reputation, is but a dead letter, a cruel jest; if the triumphant despoiler is to go laughing from your courts, and the prayer of the injured be rejected, what is the inevitable consequence? An immediate, nay, a justifiable resort to private vengeance for private wrongs; an immediate and a necessary introduction of murder and assassination. I feel and you feel that no man has a right from

## IMPORTANT TRIAL.

God, from Nature, or from Law, to injure us without just retribution. I discover that that retribution is not to be expected from the justice of my country; that he that injures is borne off in triumph, and he that complains is laughed to scorn.

The alternative is obvious and inevitable. To myself and my own exertions I must apply for that justice which my country idly promises and shamefully denies. If such damages are not given, then, in this case, as will check such offences, as will convince your fellow-citizens, that this is the place where justice is fully administered; and the injured satisfied, you take upon yourselves all the dreadful consequences that may follow. Will I give credit to my government; will I call myself protected by it, because I can recover a debt of 20 shillings by its authority, or obtain possession of an acre of land, while I am denied the peaceable pursuit of an honorable and useful profession, and the enjoyment of an honest and well-earned reputation; while the feelings of myself and my family are given up as a sacrifice to wanton and malignant defamation. Let me call upon you, then, gentlemen, by the just heavens, to consider this as no common case. Let me call upon you to feel yourselves entrusted with one of the most important decisions that has ever yet been submitted to any court in any country. By your decision we stand or fall. By your decision is every man to know on what tenure he holds his character and happiness. By your decision the base and lawless are to be taught subordination, and the good citizen to hold his just rank and safety in society. By your decision, the honor and dignity of this your highest tribunal of justice, the respectability of your government, and the character of your country are to be vindicated or lost. The injured father of an amiable family, the worthy citizen, the useful philosopher now sues before you—Professional science implores that countenance and protection without which the must wither and die—Virtue, bleeding at every pore, calls for justice on her despoiler, and the anxious heart of every honest man pants with impatience to meet in you, **THE DEFENDERS OF VIRTUE, AND THE SCOURGERS OF VICE.**

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[Omission in Mr. Hopkinson's speech:—in page 12, line 15, after the word *things*—read, “and the defendant has done much to produce them.”]

## TESTIMONY.

DR. JAMES MEASE,

**W**AS then called, who deposed upon his oath, that about the middle of April, 1798, while he resided at the Marine Hospital, Mr. Cobbett came down to the Hospital with a Capt. Young Husbards, who came to see a man that was landed from on board his ship, with a chronic disease. While the Captain went to see the man, Mr. Cobbett remained in the parlor with the witness; conversation being introduced

troduced about Dr. Rush's dispute with Cobbett, the defendant rose upon his feet, and with much warmth said "*Damn him, he had better withdraw his cause,*" the witness believed clinching his fist, and he appeared much agitated. He continued—"or I will persecute him while living, and his memory after his death." On which the witness told the defendant he was very wrong in his attacks upon Dr. Rush's method of treatment, for he (Dr. Mease) was a living witness of its efficacy, and in his practice he had found it, under Providence, the means of saving hundreds, and he believed thousands had been saved by the mode of treatment recommended by Dr. Rush.

Mr. Levy—Did he repeat these words more than once?

Witness—Upon my telling him he was wrong, he repeated, "*damn him, let him withdraw his cause.*"

— Did Mr. Cobbett go into any discussion of the propriety, or impropriety of the practice?

Witness—No.

DR. WILLIAM DEWEES being sworn,

Deposed, that a few days after Dr. Rush had delivered his eulogium to the memory of Dr. Rittenhouse, he happened to be at the house of Mr. Cobbett, whom he asked if he had heard the eulogium. The defendant answered no, but he had read it. I asked him how he liked it? He answered that the doctor had better have confined himself to medicine, and have let politics alone. I asked him what displeased him in it? On which he went up stairs and brought down the book, showing me the passage he disliked, but I cannot now recollect what it was. Having read it, he said, *Damn him, I will attack him for it.*— He did not say in what view, or to what effect he would attack him.

Mr. Harper.—Did you not understand him to mean that Dr. Rush had advanced some political opinions which he would attack, and endeavor to overthrow?

Witness.—I thought he meant he would attack him on account of his principles. He gave me to understand that the complexion of it was "*too republican*" for him—this was his own phrase.

Mr. Ingersol.—In the division of opinions among Gentlemen of your profession in this city, is Dr. Rush one of those who are for the free use of the Lancet?

Witness.—Yes.

— Of which class have you yourself been?

— With that of Dr. Rush.

— Who was William Cobbett's family physician?

— I cannot tell; I attended his family myself, though never in the yellow fever.

Mr. Hopkinson—Did you use Dr. Rush's practice in Mr. Cobbett's family?

Witness.—Yes.

Mr. Ingersol.—Is that practice or system confined to the disease called the yellow fever?

Witness. By no means.

Mr. Rawle. How long did you attend Mr. Cobbett's family?

Witness.—From the return of the citizens in 1798.

Mr.

Mr. Ingersol. Have you been ever recommended by Mr. Cobbett to any other families since that period?

Witness. Yes frequently.

Some conversation here occurred about what was the meaning of "the free use of the lancet."

Mr. Dewees explained it to be *wherever the use of the lancet was necessary: as inflammatory cases.*

Mr. Ingersol. You adopted Dr. Rush's system generally?

Witness. Yes.

Dr. Cox, was sworn.

He deposed that on the 2d of October, 1797, a gentleman who had just arrived from the West Indies called upon him, and after some conversation told him he was soon going to sail for England; but wished before he went, to see Peter Porcupine, (the defendant) who had rendered himself so celebrated. He asked the witness to inform him where he lived; upon which he, (the witness) accompanied him to his house, having occasionally been in the habit of stepping into his shop.—After some general conversation had passed, the witness expressed to the defendant his disapprobation of his publications respecting the use of the lancet, and respecting Dr. Rush in particular, as this remedy had been recommended by him in certain cases.—He replied to my observation, said the witness, that his writing could be of very little consequence, or have no effect upon the public mind; I replied that I thought it was impossible he should imagine what he said, for he must know that all he wrote must have a very considerable effect, particularly at the time the mind of the public was so distracted. He returned the same reply adding that as he was not a physician, people would naturally suppose that he knew nothing of the subject. I observed to him then, that the effect was certainly produced; he replied that he did not believe he should ever have said so much on bleeding or mercurials, if Dr. Rush had not been the author of it.

An article entitled THE POTENT QUACK, was then read in evidence of the design, and persistence of the defendant, from *Porcupines Gazette*, of October 5, 1797, which he introduces in these words:

[*The following are Mr. Fenno, junior's remarks on Dr. Rush's letter to Brown, announcing that he had entered actions against Fenno and me.*]

Here follows the letter from Fenno's paper.

After which the defendant introduces his remarks in these words:

[*I defy the Grand Empiric, aided by all his legion of subaltern quacks, to compose a paragraph like this that closes young Fenno's remarks.—These are cutting truths for the Doctor.—They leave the mark.*]

The words referred to in the latter part of Fenno's remarks are as follow:

"The fact is, and I have before glanced at it, that a loved scheme of the Doctor's ambition met a rough blow in 1793, and in 1797 a repetition, which threatens in progress to cast the scheme and its author into the shades of obscurity. This has been effected through the medium



medium of the press, and the press, therefore, is the first object whereon his vengeance is to be wreaked.—Conscious as I am, of the purest motives, and most upright intentions, I shall wait with entire composure the issue of a trial, which I have no doubt will complete the downfall of quackery and empiricism: and will at least be valuable in one point of view, as it will serve to shew on what ground stands the liberty of the press, whether it is in America an empty name, or a valuable reality—whether that to which the country owes every possession of which it can boast, aye! even its liberty and independence, shall be trampled under foot by groundless prosecutions; and all those barriers erected by the spirit of freedom, as entrenchments round poverty and obscurity, against the pride of wealth and the insolence of power, are to be rudely thrust down, and a libeticide medical tribunal established on the ruins of reason and the wrecks of common sense.”

A letter inserted in Porcupine's Gazette of October 6, 1797, was also read in evidence which related a cure of the Yellow Fever by a soldier's accidental immersion in Tar. The editor, William Cobbett, makes the following inference:

*[This seems an odd kind of a remedy; but I would rather Tar with the addition of Feathers, than venture my life against the lancet of Dr. Rush.*

An extract was also read in evidence from Porcupine's Gazette of October 20, 1797.

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The prosecution being opened and the evidence to substantiate it read,

## MR. RAWLE

Addressed the Jury to the following effect:

*With submission to your Honors,*

**I** stand up, Gentlemen of the Jury, much more impressed with difficulty on account of the extraordinary and unusual manner with which the gentleman who preceded me has thought proper to open his cause, than of any danger in which my client stands from the accusations on which this prosecution is grounded.

It has not fallen to my lot, since I have had the honour of appearing in the character of an advocate, or since I began my endeavors to obtain a knowledge of the law, to hear such serious animadversions made, or such strong stigma used on the character of any man, as that gentleman has used in reference to my client, the defendant. I could not help being struck with the comparison of that address and the publications which it was meant to implicate.—In that comparison I declare I can perceive none which deals in so strong epithets—none bordering so much on abuse, as those are with which the gentleman

has

has amused you. If it were possible to commit this opening address to paper, there would be no difficulty in discriminating which was most deserving the appellation of *slander*.—Gentlemen, if you believe the declarations of my opponent, you must be brought to believe William Cobbett to be the most *insignificant* and *worthless reptile in creation*, and that under the shape of a man, he has stalked abroad a *very monster*—that for him, no justice ought to be had—that he is to be expunged from all ranks of society, that he is to remain an eternal mark for hatred, and courts of justice are never to consider him as even the object of mercy!—Mercy, that which we all claim, that which we think we are all entitled to, seems not to be his due! Gentlemen, even your opinions and your passions too have been assaulted, and called forth in a manner, which to me, has hitherto been perfectly unknown. This human monster—this most unheard of being—every thing that is entitled to the terms of *vile* and *base*, has been represented as the destroyer of the public peace and happiness; as the disturber of the harmony of society.

But permit me to say, that this is not the way to appeal to the justice of a Jury. Justice is what even *this man* has a right to demand of you, base as he has been made to appear. You have a right to stand indifferent to the common received, or represented state of any man's character, who shall be brought before you. You are to possess no prejudices no opinions—no prepossessions. I trust justice will be your only impression in the present case. But although every effort has been used to endeavor to excite your prepossession against the defendant, every other sensation than that of strict equity, ought to be left at the door, the moment you enter this court.

On the contrary, you have heard the Gentleman amusing himself, and no doubt, agreeably entertaining his audience with representing the *highly superior* character of the Plaintiff;—he is superior to men in general—nay any man—he is an angel from God, clothed with every virtue—with every qualification, while Mr. Cobbett is nothing but a demon from the infernal regions. With you it is not left to judge of the distinction, but to you they stand on equal grounds.

Dr. Rush stands before you as a respectable citizen, who has done much to increase the good of society; but permit me say, *society have rewarded him for it*. This is his happiness, and I am not inclined to say it is not his desert. While we are entertained with such a striking and affecting picture of the calamity which has distressed our city, and the general distress experienced thereon, we are told that this good angel went from door to door, communicating his assistance freely, but no doubt, every man who so exposed himself, whatever general good he might administer, received an adequate compensation. If he has bravely faced death, he has met the lot of his profession. The common sailor, who has shipped himself on board a vessel of war, might, in the hands of my eloquent opponent, be represented as a man who has faced the cannon ball, injured himself to the dangers and hardships of the boisterous ocean, and met danger at every avenue of his calling; but what would his oratory amount to more, than that others did so, and it was their profession. Dr. Rush ought to have every merit

merit which he deserves : but let it not be forgotten that William Cobbett ought to have every merit *he* deserves, and every privilege to which he is entitled—let him have every censure he deserves, and yet, I repeat, both stand upon equal ground before you. Cobbett puts himself upon the issue, and you are to decide according to evidence, and thus only.

Gentlemen, to the declaration filed, we have pleaded not guilty. We are charged with having *maliciously* written such and such things, in order to destroy the good name that Dr. Rush has heretofore borne among his fellow-citizens. We deny the malicious part of the accusation, and to obtain our right, we put ourselves upon a jury of our country, and unless it can be proved that the publications laid to our charge are of the nature designated, to wit, malicious, we are entitled to your acquittal in the action.

The malice of a libel is collected, in general, either from its necessary construction, plainly apparent on the face of a publication, or from some circumstances easily deducible from the nature of the case.

We have heard, upon the present occasion, the testimony of some medical gentlemen brought forward, alleging, that at periods subsequent to this prosecution being entered, the defendant used words, tending to show that these publications proceeded from personal malice. To me, the whole of the publications and charges appear to be free from personal, private or domestic malice. How could they issue from personal malevolence? I ask whether it has been proved, in any case, that Cobbett has endeavored to intermeddle with the family concerns of Dr. Rush? or whether, on the other hand, the whole of the publications have not been so far justifiable, in as much as they treated only on a subject of public enquiry? Most true it is that every man has a property in his own reputation—most true it is that the law has spread about the reputation of every man all the assistance possible; but there is another thing *demands* your consideration: he who exists in community, hath a property and interest equally valuable in the happiness, safety and peace of that community. To every man, these are important considerations: every man is bound by them, and his own welfare is in them—every man is punishable for a neglect of them. It is of consequence to a man, that in the society he has selected for his residence, he should see prosperity about him, otherwise he can have but little hope of prosecuting his own means for his own benefit. In order to procure this object, he will exhort all the citizens of the same system, who enjoy a common cause with him, to adopt what is good, and leave what is evil. Where such have been the efforts of a man, he is undoubtedly entitled to respect. This principle is consistent with the constitution of Pennsylvania, Sect. 3. Art. 9. And there exists no law of the state or general governments that restrains a full and free investigation of the merits of any question in which the public are interested. If in the course of this investigation expressions are used, and observations made which may fall heavy on the concerns of the person about whom he is writing, it is sufficient for the person attacked, if he can show that he has not been guilty of untruths, nor entered  
into

into the family or moral connections of his accuser ; but that he has only thrown his mite into the public flock of information.

Gentlemen, there are few offices in society of more public importance than that of a physician, few on whom so much depends the happiness of the community. A good, skilful, laborious, honest physician, is a very valuable member of society. But, on the contrary, an unskilful, avaricious, indolent physician deserves, not only public disapprobation, but, public contempt. Private compensation, and public confidence is the sure reward of the meritorious practitioner ; but you have heard this man's character even exalted above humanity ; superior to humanity indeed must he be, if in the whole of his *extensive practice* he never committed some error ; if he never for a moment adopted some mistaken principle, and perhaps tenaciously, not to say obstinately adhered to it ! Such instances in every profession, in men the most celebrated we have known, and I presume shall continue to know. If on the *public* labors of any man in society, animadversion is admissible, on which can it be so properly exercised as on the man in whose hands, in some sense, is life and death ? Who so fit an object on whom to exercise the liberty of the press ? I sincerely trust we never shall see the day when any public character, how especial soever the qualifications of his head or heart, or how bad soever, as to exclude him from enjoying the common advantages of his good character, or secure him from just odium for his reprehensible conduct, and I trust we never shall see the time when any man, however base his character may be, should be denied that justice which our constitution and laws make the common right of all men.

Gentlemen, the Fever of 1793, it is well remembered, was truly serious and awful, a disease then almost unknown among us, so that the most wise was at a loss how to act. Different modes of treatment, and different experiments were made, but notwithstanding great numbers deserted the city, and notwithstanding the utmost exertions and ingenuity of the Physicians, about one fourth of the people who remained died. Of the number who remained Dr. Rush was one. I need only appeal to your recollections how unlimited were the publications which succeeded that fever, so unaccountable and various were the attacks, and so difficult and various the modes of treatment, that it was considered a justifiable subject of public discussion. To some of these publications I might appeal, and shew you how strong, how acrimonious was the language, used even between the members of that learned profession. The subject continued thus, for a long time a subject of public controversy, and much warmth was used. Finally, by the interposition of divine Providence, more than the united attempts of men, the disorder disappeared, and for four years we happily remained free from its dreadful ravages, conceiving ourselves quite secure from its return. However it again made its appearance in 1797. What was a subject of so much public discussion in 1793, was resumed in the subsequent attack, at that time others, besides the unfortunate defendant, who, it appears to me, is sufficiently paid for his temerity by the accusations brought against him, others took the liberty to declare, as all mankind ought to encourage them to do, what their opinions were



of the topic. At this period we find issue from the press of Mr. Cobbett what it has been thought proper to ground this prosecution on—not for assailing the private character of Dr. Rush; not tearing open his connections, nor meddling with his family concerns, but for discussing a public question, in such a manner as others had thought proper to do before him, and were then doing. The topics of public discussion were the free use of the lancet, and mercurial purges. And who so natural, so likely to be attacked as the person who was well known to be at the head of this system of treatment, a system peculiarly adopted and recommended by Dr. Rush, and followed by his pupils. Hence the name of Dr. Rush, and the use of bleeding and Mercury in the Yellow Fever came into public notice at one period. We know that the two learned bodies in this city, who were incorporated for the purpose of establishing public confidence, by an unanimity of system, (I refer to the academy of medicine and the college of Physicians)—Those two bodies established different systems in the treatment of this disease. This certainly gave to Mr. Cobbett, allowing that he is a man entitled to the use of his faculty of reason, and the common privilege enjoyed in the United States, this surely gives to him the privilege of expressing his opinion, as applicable, not barely to the principle, but to the practice used: and what might encourage him the more, he thought that whatever he might advance, as appeared in the evidence, could do no injury, not being a medical man himself, and if he was wrong he should only expose his ignorance, which he was willing to hazard, hoping however that he might eventually do good.

Doctor Rush was at that time a very public character, and exercising an important public function: Mr. Cobbett was unquestionably exercising his constitutional right to do at that time, what others did, to examine his public transactions, in which he thought he was on the side of humanity.—Suppose we see an individual, or a number of persons running headlong towards a precipice, down which they must inevitably fall, shall I be blamed if I say to them stop, listen not to the man who advised you to take that road: I will give you solid advice, go the other way. They escape the danger, and I have done my duty. Gentlemen, however the conduct of Mr. Cobbett may appear in the subsequent part, it is plain that the system established by Dr. Rush, has not produced all the good effects he wished.

[Mr. Rawle here read a letter written in August 1798 from Drs. Physic and Cooper at the hospital, requesting advice in cases of the fever, to which Dr. Rush wrote an answer acknowledging the uncertainty of *any* precise method of treatment in *all* cases, and that bleeding and mercurials were not, in every stage, and every appearance of the fever, a proper mode of treatment. He concludes, acknowledging the difficulties those Physicians had to meet, scarcely ever having an opportunity of commencing their treatment until an advanced state of the disease, much of the success in which, depended on a particular *hour* of application. Some, he said, “in 1797 he occasionally lost, even after the application of bleeding and mercurials.”]—From which it appears that the new system of treatment, was not the infallible cure which

was supposed. But whether this medicine was found to answer the Doctor's expectation, I know not, my object is to prove that there was more than one method of counteracting that disease, and that it was the business of those who had the misfortune to be exposed to the danger, to make their observations, with freedom on those various modes, as much as experiment was the privilege of the practitioners. I take the principle of the Law to be, that your minds should be well satisfied, either *from an internal evidence of the publication, or from concomitant circumstances, that the writer had a malicious intent.* This principle is well established in the books: see Buller's Nisi Prius p. 8. Where it is plain that the *git* of the expression must be MALICE, in order to constitute it a crime in the eye of the law. And again p. 110. same book "the words must be malicious, as well as false, to support an action for slander." If it is justifiable to show that words used with a sincere and liberal intention, in order to prevent mischief, is harmless, is not that man justifiable, who seeing a dangerous system likely to predominate, who prevents, as much as lies in his power, that system being put into action? This I consider as a very essential ground of our defence.

We contend that Mr. Cobbett exercised a right given him by the laws and Constitution of this State; no law required him to publish, but he had liberty so to do, and he is far from deserving that odium with which he is now stigmatized. That men's language, and modes of expression will differ according to their talents and education, I presume you will all allow. When I say this, I hope you will not conceive me to mean that the whole of this man's merit consisted in the scurrility with which he treated his opponent. Here I may justifiably apply the observation of Dr. Johnson, that "those who think profoundly will express themselves differently from the common acceptation." This profundity of thought could not be supposed to be an attribute of my client; no doubt, he spoke from his momentary sensations. But for communicating these observations to the public, is the law to be appealed to in this solemn and expressive manner? Is the strong arm of justice to be called up, because the little forms of society are supposed to be attacked by an individual! No, such is not the fixed principle of the law, nor of common justice. The law will be found to state it as a principle, that in no instance where the party has gone wrong through the impulse of passion—beyond the bounds of strict decency and propriety, that for this cause alone, the plaintiff is to recover damages. Salkeld 693 says, that "to say a justice is a fool, an ass, a blockhead, or a bufflehead, is not indictable, unless the words are in themselves such as show an intention to deprive the party getting his livelihood." These are rough expressions, but it appears not indictable.

[Some distinction was here remarked by the court to exist between words that are "indictable," and words that are "actionable."]

Mr. Rawle contended that unless the party could show that he had sustained some injury by the using of the words, no damages could be laid; but he observed that their opponents had not thought proper to prove any special damages, from which it must be deducted by a jury that none were sustained.

In

## IMPORTANT TRIAL.

In discussing a matter of public interest, the amount of damages, if the jury should think proper to find for the plaintiff, must depend on the situation and ability of the person who undertook to discuss it. Besides, the powers of men's minds are not always alike. Truth is frequently attacked by ridicule, much less can we expect a public profession to remain exempt. Pope says

*"Safe from the Bar, the Pulpit and the Throne,  
But truth is touch'd by "ridicule" alone."*

The enquiry always is in the case of scandal. "Is it a matter in which the interests of the nation are implicated?" If it is not; if it is a matter of public discussion, as in the present case, it has ever been considered as harmless, though perhaps poignant ridicule. We find nothing in the declaration but words which relate to the public practice and medical system of Dr. Rush. We were told that proofs of the malicious design of our client would be produced; we have heard the evidence of three persons brought here to prove the malice asserted. But neither of them has related an item whereupon to found that accusation. A clear proof to me, and must be to you, Gentlemen, that no malicious design, a temper and disposition absolutely necessary to the conviction of the defendant—no malicious design did exist.

The effort made to support malice from the evidence of Dr. Dewees, respecting the eulogium on Dr. Rittenhouse, to me, is very feeble; for, from the words of the witness and the concomitant circumstances, it is clear the attack was to be of a *political* nature, on account of political principles publicly delivered. Change it, and say it was to be against the man, it must be proved to have been carried into execution.

Another gentleman relates a conversation with Mr. Cobbett in Oct. 1798, about the consequences of his publications. Mr. Cobbett then declared that he did not think his writing could have any effect, and at last he declares that he should not have attacked the practice of Dr. Rush, if the Doctor had not been the author of it. The true meaning of that expression, it will be difficult for you to ascertain: but if you understand it not fully, you are not to receive the least impression from it. Perhaps it was this: if it was an obscure practitioner, a man of no note, it would not be worth my notice. But mark the difference. If a man, such as the Doctor has been held up to you, —not only the first in America, but almost, if not quite, in the whole universe; such a man inculcates principles, and draws others into the adoption of them: a new system in the hands of such a man merited Mr. Cobbett's attention, in his editorial capacity; and I think he was justifiable in thinking him a proper person for attack. Gentlemen, there must be something more than mere suggestion; there must be something to prove the viciousity of the writings; or you must give a verdict for the defendant.

Our client is absent, he has rested his case with you to give your decision upon his rights of publication; we claim that right for him, a right which every free man is entitled to at your hands, and for him, I think we shall not claim of you in vain. The farther examination

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nation into the publications and the evidences produced, I shall leave to my colleagues, who I have no doubt will be able to prove to you that no such malice as is charged, is intended or is any way included. I will only remind you of one apparent inconsistency in the reasoning of our opponent; If the system and practice of Dr. Rush has been so useful, so infallible, as you have been made to suppose, in order that you may give judgment for large damages, it is natural to suppose that the feeble efforts of Mr. Cobbett could not destroy his celebrity, or injure that system, and therefore it could be but little or no offence for him to express his opinion.

With you I shall leave the weight of my arguments; we have no evidence to produce, but I trust you will see the justice of our defence.

HON. MR. HARPER.

*Gentlemen of the Jury,*

THE question in this case is not whether the plaintiff is a physician of eminence, a man of worth, a peaceable citizen, a good father, or a tender husband,—was this the point to be discussed, we must shrink from the opposition, and allow the claim to be in his favor, nor is it whether our client has offended against decorum, and every principle of civility and good manners,—or it would be equally difficult to make out a defence. The question is, whether, in these publications, contained in the declaration, which has been read, the defendant was actuated by a design to injure Dr. Rush in his personal character, or to injure him as a physician, or to run down and laugh out of countenance a practice which he considered would have a mischievous tendency. Gentlemen as you must be of one or the other of these opinions, your verdict must be for the plaintiff or for the defendant: If from the whole of the testimony you should be of opinion that the defendant, in making these publications, was induced merely by a desire to overthrow a system of medicine which he thought mischievous, you are bound to give him your verdict. And, why? Because this action is brought for the *malicious* design with which it is said he used those expressions.

What is malice?

Malice in its present application must be an attempt and design to injure the plaintiff in his personal, or in his professional character. When this ingredient is not made out, either from its appearance on the very face of the action, or by direct inference, the action of slander cannot be supported. This is an obvious and incontrovertable fact. No man has a right to attack another in his professional pursuits, so as to rob him of the fruits of his industrious efforts, but every man has a right to attack a ruinous system, and whether a system is ruinous or mischievous, *he* who makes the attack, and *he alone* is to be the judge, because if I lift my hand against a set of opinions or practices which I hold to be evil to society, I must first suppose my liberties or privileges, or those of society to be in danger, before I should exercise my freedom of opinion.



I will admit that if, in the combat of opinions or practices, I throw any unnecessary personal reflections, and attack the individual holding those opinions, if I go beyond his opinions, and abuse his person; if I go beyond his person, and traduce his character, then indeed the pretence that I meant only to attack his opinions, would not avail me in a court of justice; it would be supposed merely a cloak, merely a fallacious excuse, and therefore would fairly be actionable, and subject me to punishment. The question, then, will recur whether William Cobbett meant to attack Dr. Rush's system, or his personal and professional character? If the latter should appear to be his design, he surely has stepped beyond due bounds. The utmost latitude of admission that I shall grant in this case is, that if attempts are made to bring a physician into general disrepute, then the injured party may claim retribution from the laws of his country. Having gone thus far, let us enquire how far these ingredients exist in the present case. Whether there be, in the paragraphs upon which this action is founded, any thing from which malice can be fairly and properly deducted, or whether the only design of the defendant was to overturn, if he could by argument, that part of the practice of Dr. Rush which consisted in "BLEEDING" and "PURGING" in the yellow fever.

We will read the paragraphs, compare the evidences with them, and see whether this disposition is contained in them.

[Mr. H. here read the paragraph of September 19th, 1797.]

Before I enter into the examination, I will admit that the same studied language which well-bred men ought to use, is omitted, and that the same stile and decorum is not used which, if I were to combat a public system, I should think it right to use.—But are we to wonder at it? Are we to wonder that writers, in a controversy, in which they had excited so much acrimony, even among the members of the faculty themselves, should be led too far? Nay, have we not heard it strikingly exemplified in the conduct of the Gentleman who opened this cause! Gentlemen in the Legislature do not always avoid this unbecoming practice of personal abuse. But although that fact would not justify the man, ought we not to look with some little excuse upon the author of a newspaper? If this consideration ought not to pardon the offence, it ought at least to extenuate it.

Laying aside what is merely indecorous; what is merely harsh language, let us enquire what is the substance and meaning, and the total amount of the charges.

Having read the article entitled "*Medical Puffing*," Mr. H. asked if there was any thing like slander in that piece; if so, hardly a newspaper which was printed in the United States, but might be made a subject of enquiry by a Jury.—I do not, resumed Mr. H. justify the language; but what does it amount to? It calls an eminent physician a remorseless bleeder. What is that? It is that he pursued bleeding too far. But have not some of the most respectable medical men said that it is remorseless and destructive? There are such. The idea conveyed is nothing to you; whether bleeding in his practice, is pushed too far, or whether it is not a subject of your enquiry; but whether this man meant more than to expose that system which was extreme in his view

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Is a proper subject for your enquiry. Was it not wrong that a ruinous system should have been persisted in, when human life was so materially connected? This was so considered by him, and he thought it his duty to expose it. I am well convinced that it was not only unbecoming language, but I believe it to be very untrue, but is it a slander? No, it is merely unmeaning ribaldry. Suppose, I say, a man is in the habit of getting himself puffed in the paper: he may be laughed at, but could do nothing in it. He might get himself puffed, and yet be a very able physician.

"Blood, blood, they cry more blood."

To be sure this is very hyperbolical, but strip it of its exaggeration, and is it not true? Was it not common, during that period, for these ideas to be reiterated through the papers and pamphlets of the city day after day? *The free use of the lancet, the free use of the lancet*, was constantly repeated by the medical men in favor of that system.

As to calling a man a shameless silly puff, and in general, the letter of Dr. Tilton, wherein he is called a sour wry-faced democrat, I do not know how it came to be introduced, or what it has to do with an action brought by Dr. Rush! I have heard a very good character of Dr. Tilton, but if he is "a sour wry-faced incorrigible democrat," I am sorry for it. As to the epithet of "Master bleeder," I see no harm in its introduction; it is no slander, but an high eulogium, raising him to a pre-eminence, rather than giving any abuse. The question respecting mercurial purges is then introduced, "Is it good for Sans culottism, Doctor?" I wish it was, gentlemen, for if so, it would be a ready cure for a great number of persons, who, I fear, are now utterly incurable. Comparing mercury to Sampson, and speaking of its ravages, Mr. Harper did not conceive it personally applicable to Dr. Rush, but to the system, which was particularly pointed at in reference to the "Rushites."

Not Dr. Rush but his partizans, which amounted to nothing. Is it slander, said Mr. Harper, to say to a gentleman, when we contend in another place, (Congress Hall) that certain political opinions go to the subversion of Government, or in other instances tend to rob the country, &c. No, far otherwise, a great distinction is always held between a man, personally, and his principles. Miserable would be the times, were it not so, and much more miserable would it be if we could not be permitted to call in question the practice of a physician, without being subjected to an expensive action for slander. The only meaning of these words is, that it is a mistaken principle to attach to certain practice the virtue it has not, for that it has occasioned the death of many, rather than recovered them from disease. If the words had been that Doctor Rush killed more than he cured, it would have been actionable on good grounds, but it is only vaguely the "Rushites," &c.

The next paragraph is in 25 September, signed "a tavern keeper." Here we only find Dr. Rush's name mentioned as having published a book on the yellow fever, and his being a great patron of the art of blood-letting. This is known to all America and Europe, it has never been denied, but it is not slander. It might with propriety be called a piece highly ridiculing the practice of blood-letting: I believe it

was

was so intended—but shall such a piece of *ridicule* be made the foundation of an action of slander? If so, some of the most admired productions in every age ought to be considered as slanders. In every age ridicule of this sort has been resorted to, and where it does not run into scandal it is approved. But I say this does not, and I know you will say by your verdict, that it does not run to that length.

Mr. Harper then read the article inserted September 26, 1797, which he contended contained nothing injurious to the reputation of Dr. Rush as a physician, nor as a man, nor would it tend in the least to deprive him of a livelihood, one of which must be proved in order to substantiate the action. As to the terms “potent quack,” and “medical puffer”—the words are very indecent, but it is always a principle of observation that such *low, unmeaning ribaldry* always recoils on its projector. Far be it from me to justify, or even extenuate such language, but that it is no offence in a law view is easy to prove. Contempt is the only punishment it can have.

Next Mr. Harper took up the article of September 29, 1797, preface “A PUFF equal to Dr. Rush’s.” Here Mr. H. said was a puff introduced the most ridiculous and absurd which could be conceived, and he called it *EQUAL* to *Dr. Rush’s*. Surely he said it was *EQUAL*, and it could be no slander to say so. It was very indecorous to be sure, to bring in the name of so respectable a character as Dr. Rush, when such an extravagant piece was introduced, but it did not tend to lessen the man in his reputation and fame, and therefore could be no slander. This Spilsbury had invented a remedy to cure impurities of the blood, but was it not a more perfect cure to let out that foul blood? Certainly so. The indecent epithet of *master Sangrado* he could not defend; it was very unbecoming to apply it to so respectable a character. But suppose a man was called after in the street by this name, could he support an action for slander upon it? No, actions of slander are not to be brought for *abuse* but *injury*.—This *Sangrado* is mentioned in a novel as a famous quack, who used to take blood and give water to his patients until he brought them to the grave.

Mr. Harper again contended, that from the whole sum of the evidence it was clear that not the man, but the mode of practice, which he considered dangerous, was the object of attack. He then took up the article inserted in Porcupine’s Gazette, Oct. 5, 1797, extracted from Fenno’s Gazette, subsequent to the action being entered, which he said, the greater part of it, was only an extenuation, because it expressly says, that none of the paragraphs made the foundation of the action, were meant more than to combat “an erroneous system.” This printer considered himself to be unjustly assailed by the action, and therefore it is no wonder if the subsequent publications are acrimonious; but is this a proof of his criminality in the first instance? Even those subsequent publications go principally to the system, and say very little about the man himself. If the malice was intended at the time he ushered the publications for which he was sued, he would not have waited to display it in the future ones.—Gentlemen, the subsequent publications cannot support the action, as they took place since the action was commenced, and now only from the resentment natural to



a man who considered himself unjustly prosecuted; they cannot therefore be called as a proof of the motive with which the first were written, except the malice had been plainly expressed in them, which is not the case.

Verbal testimony is next produced: three gentlemen of respectability for their age, appear in court, but I am sorry the action could not be supported without resorting to private conversations, perhaps used in confidence, and certainly without a view of its going farther than the spot where it was used. This particularly referred to the two first. But it may be laudable in the gentlemen to come and volunteer themselves in support of a man, their friend and patron, whom they consider assailed. I will admit that the expressions used by the defendant, was proof of his vindictive spirit, and were very improper, but I ask what influence it can have on the action now before you? This strong resentment was in consequence of his being sued by Dr. Rush. If it proves any thing, it is that the defendant was certain of the injustice of the action, he having, legally speaking, done no harm, at which his mind revolted, and being very much agitated at the mention of the suit by Dr. Mease, the ebullition of his inflamed mind burst forth into an unwarrantable expression. Is this the mark of *malice*, settled, cool, deliberate malice? Malice speaks less and does more, than is apparent in any part of the defendant's conduct. You may call him ill tempered, unamiable, harsh, &c. if you please; in so doing you do him justice, but to call an hasty expression, *malice*, is a perversion of terms.

The testimony of Dr. Dewees amounts to less than the last. The defendant was displeased at certain passages in an eulogium spoken by Dr. Rush, and he said the Doctor had better have confined himself to medicine. This to be sure was very impertinent, for he had nothing to do with it; but it was not criminal. What he meant by its being "too republican" does not appear. I have read it, and with pleasure; but he or any man certainly had a right to find fault with it, if they disliked it. He farther said he would attack the Doctor about it. Does this mean that he would commence a vindictive attack upon the Doctor, and endeavor to wound him in his reputation or profession? No, gentlemen, this is not to be inferred. It was a determination to attack the principle advanced, to expose it to ridicule, so that it should not have the effect which it was intended to have. It could not possibly refer to any attack on his business, and therefore cannot stamp a malicious intent upon words used for another purpose so long afterwards. It appears that Mr. Cobbett did afterwards employ Dr. Dewees in his family, and recommended him to some of his friends. I am very glad of it, I believe him to have merited that recommendation, but this is no proof that it was not to the system, but the man that Cobbett aimed at, for although Dr. Dewees was employed by him in other cases, he might not have done it, had the yellow fever come into his family, if he had, it would have changed the question, and proved the scandal.

The evidence of Dr. Cox goes only to prove the opinion of Cobbett that all he could say would do no harm, since the attack upon the  
bleeding

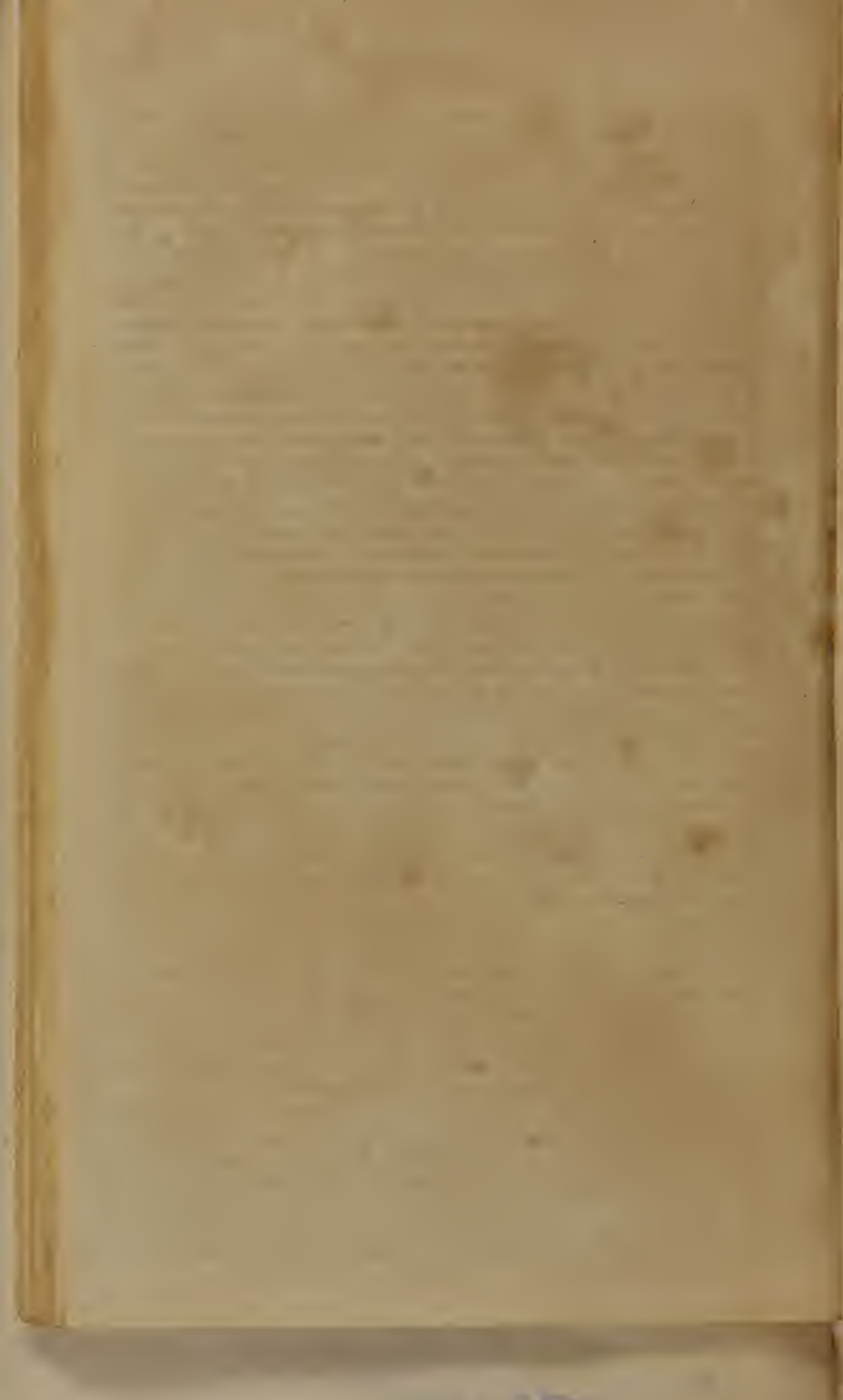


Bleeding was well known not to have flowed from professional knowledge. This was paying homage to the character of Dr. Rush.—If a man of no note had introduced the system, he would not have said a word about it, but since a man of Dr. Rush's talents, had advocated it, it was an object worth attacking with all his might. But wherein is the coincidence between this testimony, and that related by Dr. Dewees? The circumstance of the eulogium occurred in December, '96, or in January following, but the evidence of Dr. Coxe relates what did not occur until the September following, that if Dr. Rush had not been the promoter of this purging and bleeding system, he should not have thought it worth while to say much about it. There can be no relation or connection between the two, because one refers to expressions which he denominated "too republican" for which he meant to attack him; but the other is wholly bent towards his system of physic. It was the weight of authority, so great a man as Dr. Rush being at the head of that *disapproved* system, which called forth, not his malice, but his animadversions. It does appear to me that there was no appearance of the ingredient which the law calls malice, and which is necessary to vitiate his conduct, through the whole progress of the discussion, and that this man was not injured in his name, fame or reputation: in his name as a man in society, or in his domestic connections; in his fame as a man of skill and profession; or in his reputation as a Physician, and consequently there is no slander to his character.

We have heard much of the family of the plaintiff, and of the keen feelings of his respectable wife, of which not a doubt can be entertained. I should never have thought it my duty to have hazarded my respectability by standing here to advocate a man who should slander so eminently useful a character as Dr. Rush, or his very respectable wife or family: far be it from me, I should rather have consigned him and his cause to the fate it would deserve. My professional name should never have borne the blot such conduct would justly attach to it. But this I conceive not to be the case. That my client has overstepped the bounds of good manners and decorum, I have admitted, but that he had a right to run down what he believed to be a mischievous system, I have contended for, and still wish to impress upon your minds. His conduct must meet with strong disapprobation, but agreeable to the rules of law and justice he merits your verdict, because neither a breach of good manners, nor harsh opprobrious epithets can be construed to mean *slands*. How reprehensible soever his conduct, if he has not slandered the good name, fame or pursuits in life of Dr. Rush, I repeat that William Cobbett has a demand of justice at your hands, and that is to acquit him of the declaration.

F

MR.



MR. MOSES LEVY.

BY YOUR HONORS' LEAVE.

*Gentlemen of the Jury,*

THE enquiry before us is of a nature to demand our most serious consideration. From the attention which has been given to it throughout the discussion, by you and the Court, the utmost candor is evident, and a just conclusion certain. The suit you are now to consider should be perfectly open to your understanding; its nature should be explained, and some of the errors corrected which have too generally escaped from the counsel for the defendant, though, I presume without intention.

This is not legally a special action for slander; it is true the action is to recover damages for grievous and unprovoked slander, but in its nature, this is an action for a libel. An action for *slander* and an action for a *libel* is differently understood in courts of justice.

Words may irritate and rankle; they may even blast the character of a man upon whom they are spoken, but they perish the moment they pass out of the mouth of the speaker, and the shortness of their duration lessens their importance. But what is committed to paper,—what is *printed*, has a lasting impression, and is capable of much, and universal mischief. It exists through ages, and is not confined to the seat of its birth, but may extend even to the remotest parts of the earth. There can be no bounds of its effects. If slander, then, is punishable by the law, with how much more nicety should reputation and private honor, be guarded from attacks by writing. For words, however public, the law has therefore provided no punishment: the law does not consider the public peace so far injured thereby, as to command the public officer to issue prosecution. But words committed to paper demands more attention, because more extensive are its effects. Taking notice, therefore, as the law does by this pointed distinction between words spoken and slander committed to the press, the offence is defined.

In relation to words spoken, see 3 Blackstone 123, “Words which may impair, or hurt a man’s trade or livelihood, as to call a tradesman a bankrupt, a *physician* a *quack*, or a lawyer a *knave*.” These are an exception to the general proposition which I have laid down, that words are harmless. These words are considered as a good ground for action, because they attack in a vulnerable point, and it remains with the defendant to show that there was no malice intended in the use of them. Thus we find that the burden is put on the defendant.

Another way of attacking a man’s reputation, and a more serious one is by printing, writing, exhibiting pictures or signs, &c. so as to set any one in an odious and diminutive light, see 3 Black. 125. Every libel has a tendency to breaking the peace, by provoking the person libelled to break it. It is unnecessary to multiply authorities to prove the law is pointedly against the defendant, he having written what

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would have been a libel even if spoken. I shall take it for granted then, that this newspaper attacking of Dr. Rush, as "quack," "potent quack," "grand empiric," &c. "who had slain his tens of thousands," is a gross and infamous libel, except it should be made to appear otherwise by extenuating, and giving it a mild aspect.

Gentlemen, the principles of law laid down by my colleague, in his opening address were just, and consistent with the English books of law. If, for a moment, his zeal carried him into a state of effervescence, for which he is blamed by our opponents, it is what the most moderate man, who is warmly attached to reputation and character, who has read what was inserted against the plaintiff, can scarcely refrain from showing. Who could restrain a warmth of expression at seeing a worthy, valuable citizen so lavishly abused without provocation; without ever appearing to have spoken with the defendant, or even glanced at his principles or conduct. Farther, we find this malevolent intention repeatedly pursued in, even after a prosecution was commenced.—It certainly will not be, nor has it been contended, that character is not a sacred thing; no one shall touch it with impunity. Character is the road to private happiness and public confidence and honor. Destroy the characters of men, and it dissolves the union which blends together society, nor wealth, nor real merit can conceal contempt. So careful is the law to preserve character inviolable, that even the memory of the deceased is sacred, and the offence of traducing that memory is punished by law. It is not enough, then, to prove that the slander cannot operate to injury; no, the imputation cast upon the memory of the dead, might lead to acts of violence between the living, and thus the peace be broken. Such a libel as this upon the character of a man, even after he had been dead fifteen years, would be sufficiently atrocious to justify an indictment and punishment.

If the importance of reputation is so expressly acknowledged by the laws of this country, and if these laws are deemed so essential to the public peace, how are they to be carried into effect, but in one of two ways, legally.—First by public prosecution, in which the defendant is not at liberty to give the truth of the libel in evidence, or secondly by an action for slander, in which he is at liberty to prove the truth, which if he can do, exculpates him from legal blame. Of these two, Dr. Rush was not at a loss to know which was most proper for him to adopt: it was reason enough for him to commence a civil action, because it gave the defendant an opportunity to bring forward the truth in justification, if he could do it. This civil action being commenced, you are the organs through whom alone we claim justice. A jury taken from the mass of the people, is a permanent and invaluable institution: they can best estimate the value of private or public character, and dispense justice in proportion to the quality of the offence. The office of a jury is permanent; however the persons composing it, may vary or die, yet the institution ever remains, and they are the judges on whom the law has rested property, personal liberty, and personal character. In cases where a jury estimate damages too high, wherein damages can be easily estimated, the court have a controlling jurisdiction over their verdict, by ordering a new trial, and referring it to another



ther jury. But in an action which refers to character, to chastity, or to the honor of an individual, you are the uncontrolled judges. Matters of property the court is supposed to be able to estimate, but of the value of character, &c. the jury are supposed to be able to give the best judgment. If therefore the character of a valuable and respectable man is wantonly and wickedly attacked, it lies with you, as the guardians of your fellow citizens, to estimate the damages. You have characters of your own, and you know the importance of preserving them inviolate; all of you follow some business, and you cannot be ignorant of the violence and effects of an attack on the means you use to execute that business. You, who are merchants, must conceive the danger a newspaper publication, declaring you a bankrupt would be to you: it would wound your reputation so as to effectuate your ruin, by stopping your credit and your trade. It would be no excuse to your opponent to say it was but a jest, because the defamation would be effected, and you must suffer. Picture to yourselves, if you can, how you would feel, if precisely situated as is the defendant! of what avail would it be to you to be told that it was only *ridicule*? Suppose an infamous picture was put before your door—suppose a pair of horns, describing the conduct of your wife, and that repeatedly, would you be satisfied at being told it was “*a test of truth*” and that “*ridicule could do you no injury?*”—suppose it was a label put, that you were guilty of this or that species of swindling, or worse, suppose this to be inserted in the newspapers,—suppose that instead of low, indecent, and ruffian-like vulgarity, you were attacked with a keen satire,—would it be to your benefit that you were cut with a *sharp* knife? No, it must have a direct tendency to ruin, or material injury, and notwithstanding the utmost use of philosophy in calming the mind, to say it is only ridicule will not avail to compensate the injury.

Let us enquire what was the situation of Dr. Rush at the time this slander was circulated. He resided in Philadelphia, and it was at a period when most had deserted it who possessed property sufficient to make their escape, from a sense of the danger to which they should otherwise expose themselves. He had property to fly, but he chose to remain. Can you suppose, Gentlemen, that he remained here unruffled? His object in staying could not be to enhance his private property, for it could not be profitable for him to stay when most or all of his profitable patients had gone. No, his object in staying was the general good—to mark the steps of the disorder, and the sensible effects of the remedies which he applied, and to lay before the public a series of facts and observations which might in future, either keep the pestilence out of our land, or if invaded again, restrain its progress.—Yes, at this important moment, in the execution of a great service; when every citizen of Philadelphia ought to have acknowledged their obligations to the man who would brave Death for the general good—instead of public thanks, the great points for which he was contending, and the great labors he was executing, were attacked in a public newspaper with the most degrading ridicule, scurrility and vulgar jest. Yes, the defendant then insultingly attacked his professional skill, in order

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to bring the man into derision, and depress his name as one of the most dangerous of the human race.—Gentlemen, what does such a man deserve ; a man who does not claim the honor of a single *stick* among us ; a man who has taken the presumption of degrading the most respectable characters of our country, from the President of the United States to the lowest citizen, whenever their sentiments have happened to come in contact with his. In the course of this cause, he has sworn himself an Alien, and in another cause he has declared his intention of returning to his own country. Yet this man who professedly declares himself of no country, pretended to wish Dr. Rush had stuck to his medical profession, and have let alone politics ! This man could not be supposed to be interested in the politics of our country ; he no doubt would have taken the part of his own country, when in collusion with this, for he glories that he is not the citizen of a republic. And shall he be permitted to revile a respectable citizen of this country for doing that, which, if he had not done he would have merited censure, or at least not merited that good name now so justly given him. Dr. Rush had uttered some sentiments which were “too republican” for Mr. Cobbett. This furnished a clue to the subsequent attack which he made, not with a view to correct the medical practice ; not to prevent the introduction, or stop the ravages of a dreadful disease—no, he stopped, as far as he was able, any examination into the truth ; as much as he possibly could, he weakened the force of the mind engaged in those useful researches by clamor and abuse, and the ground was, because he was a *republican* ! What could he mean by this declaration, that he would attack him for it ? The result will answer. While his republican opinions gave the offence, why did he not attempt to show that those opinions were founded upon wrong ideas of government ? But not one word was ever seen upon that head. No, his attack was designed to be on a part more useful to his vicious designs, and more injurious to the man—on his reputable name as a *Physician*. This will account clearly for the distance of time between the threat and its accomplishment. In January 1797 he threatens, and keeping in his mind the offence, he began not to put it in execution until September following. The arrow which was stuck in his side, he did not attempt to draw out at the moment of resentment, but there remaining it grew stronger as it grew older—it must remain until a fit period for making it felt. None so fit as when his practice of physic was at its height, and the mind of his patients the most weak and susceptible.—Men differ much in opinions ; to attack him therefore upon the republican principles, he had laid down would not do ; that was an injury not sufficiently extensive, he would not attack him there ; he would wound him to effect. Accordingly at the moment of trepidation and confidence he cries out “Dr. Rush has been the death of thousand.” Thus he produced by skill, what argument would never have effected.

It is said Cobbett has the same right to offer his opinions, and to the liberty of the press which others enjoy, and to examine public questions, &c. for which the constitution is appealed to ; but permit me to state to you the principle that though a right to examine into the conduct

dict of public officers and discussing public questions is there given, a right of responsibility for that examination is likewise given, in case of the abuse of that liberty. Admit that he has the right, (though in another case it has been declared that aliens have not similar rights with citizens) there is still much reason for jealousy, because, as he has not the same interest at heart with citizens, not expecting to spend his days here, his discussions of public questions should be carefully looked to. Indeed I think the "cloven foot" is plainly observable in his writings. There is something appears at the bottom, though it might not comport with his interests to avow it. Suppose this man was investigating a system, or searching after truth, which he had a right to do, are these researches to be made with vulgarity, defamation, and scurrility? Is this the way to come at truth? Are not justifiable researches made by others, and with success, without it? Surely you must all think this the most likely way to defeat his pretended object. The true mode, if I wish to convince of an opinion, is to reason with the understanding, and not traduce the character, and opinions of my pupil or opponent. What would the American people be thought of, if they could not be convinced without low abuse? And what our Courts of Justice, if this slanderous usage was to be permitted with impunity?

The press is of incalculable benefit; it is the great road to information. The nature of man is formed to aspire after truth, but it cannot be expected by initiation, it must come into the minds of men by a series of steps, one leading to another: the press is a very important help to this progress, because by it we discover in one part of the world what has transpired at the most distant part from it. Thus improvements in arts and science are made. It is for its inestimable general use we value it. Do we value it because it furnishes any man, who is able to purchase a set of types, and paper, with means to blacken another man's character, so that old age, virtue nor chastity cannot throw a shield round the victim of his envy?—It is necessary to encourage the press, but shall it be done at the hazard of character—of all that is dear to man, his very means of subsistence? If so, instead of increasing our knowledge and happiness, it would operate as the greatest curse upon frail humanity: There is no principle in government, in Philosophy, or in religion, that is so sacred but the fangs of envy might successfully attack through the licentious use of the press. But if the aim of an individual is to improve the sciences, or the happiness of man in any way, whatever be his mode, he ought to be protected and encouraged. If his reasoning is fair and candid; if his arguments are addressed to the understanding; if he shews a design of increasing the mass of knowledge among mankind,—to him the press ought to be free. It is by this means man is wrested from ignorance, and made as near to angelic as his nature will admit. If the defendant had taken these means to obtain his object—to *destroy what he thought a ruinous system*, as is pretended, far would it have been from the plaintiff even to have blamed him, much less commenced a suit against him. The opinions of Dr. Rush were circulated from an idea that they were just; he submitted them to public search and enquiry. How were they to be

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be answered? who were the people to be convinced of their propriety or impropriety? Do the mass of the people know how to form a just judgment on it? As for myself, my education, habit of life, nor leisure has enabled me to form any judgment upon it; and I presume few of you are able to say whether the system of Dr. Rush is false or true. At the period alluded to, Philadelphia was in a distressed state, and owing to the prevalence of the same disease in several parts of the union, commerce and wealth have been considerably impaired. Did this man endeavor to lessen that affliction? were his efforts directed to promote public happiness, or to satisfy personal animosity? Gentlemen, you must determine these points. Did he accompany his arguments with a single scientific remark, or give a single argument as to the origin or necessary treatment of the disease, as though he wished to alleviate the prevailing distress? Every thing proves that he wished not to improve the system, and why should he? he had no incitements; he declared his design not to spend his life amongst us, and of course had no common interest with us. To him it was not an object whether Philadelphia was desolated or not. Perhaps, indeed, the reduction of trade here would give him pleasure: the diminution of the growing wealth of the principal cities of the United States, might afford him gratification, since his own country must otherwise receive impressions from our prosperity. No, it is evident he did not wish to develop error, to convince men, or increase public happiness, or he would have used arguments to show the fallacy of the practice established. But he knew not, nor cared any thing about it.

I shall now proceed to prove, by the most irrefragable evidence, the *previous, concomitant, and subsequent malice* of William Cobbett, from the testimony you have heard.

There was a previous intention of attack. Before the writings issued, the design was formed. Whenever an act shall appear, that corresponds with a previous declaration, we may justly conclude a coincidence therefrom. Thus, should a man say, "I will raise such an army, and oppose such a law:" if in nine months after, such things are done, the circumstances are blended together, and it is supposed to be treason. As we observed before, the circumstances of January and September, '97 are coupled so as to be impossible to part them. He then really fulfilled his promise, endeavoring to make Dr. Rush appear as odious as possible. I can see no excuse for such epithets under the name of *ridicule*, but I will say, any writing that tends to set a man in a ridiculous light is a *libel*. The words used to ridicule the plaintiff, might excite a laugh, but that is not all it ought to excite, as the honorable Gentleman supposes, who spoke just now. Shall the attack salt, the elegance of language, or the keenness of a satire, excuse a man's abuse? Of what comfort would you think it to be cut with a *sharp* knife, and should the offender be excused, because the weapon was keen? Shall a man dare to bring the President of the United States, or the Congress into contempt, and be excused under the name of *ridicule* and *ribaldry*? No, the laws of the United States, and of the States, provide that notwithstanding the keenness of the expressions, a libel shall be punished. It is not justifiable merely  
because



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because it is calculated to excite a laugh. Does not the defendant represent the plaintiff in an odious point of view, and ascribe to him the murder of his fellow creatures, by the use of bleeding and mercury? Can there be a more severe attack upon a medical man, or upon his art than this? What kind of man must he be, who follows a particular system with callous heart and murderous hands, when he sees direful effects attending that system? Who would follow such a system of slaughter as this is represented, but the most abandoned and unfeeling wretch; and who would employ the man that should to embroe his hands in blood?—This “potent quack;” this “murderer;” this unfeeling empyric, rejoices at the murder of his fellow-citizens, and has no other way of getting over his misanthropy, than by eulogizing himself, or getting some weak men of his own profession to eulogize him!—Gentlemen, I ask if this does not set the plaintiff in a ridiculous point of view,—a fit object for the detestation of the world?

With respect to Spillsbury’s antiscorbutic bill, it is an exemplary specimen of quackism—an universal nostrum worthy universal contempt. “There master Sangrado, beat that if you can.” Meaning, by writing letters, and getting eulogistic answers purposely to puff yourself. In my opinion these words, and the words “a puff equal to Dr. Rush’s” means no more nor less than that Dr. Rush has equalled it, and therefore is an empyric. On the second of October Dr. Cox called on Cobbett, when he advised him to withhold his publications, as he could not calculate on the injury they did. Notwithstanding this evidence of their ill effects he went on publishing on the 5th, 6th and 20th of October, increasing the aggravation of his crime. He said if any other man than Dr. Rush had done it, he should not have so gone on. Was it that he thought Dr. Rush high in his profession, and therefore the most proper object whereby to attack the system? No, I think it quite otherwise. Could any man hear the gentleman who spoke last, complimenting Dr. Rush on this pre-eminent station to which Mr. Cobbett had exalted him, without laughing? Can any man think him sincere? I agree it was all the honorable gentleman could say, because a case like this must necessarily put ingenuity to its last shift, and leave genius without even a plausible resource. No, we know better. He had called the Doctor “Sangrado” “potent quack, &c. :” he has aspersed him with “killing his tens of thousands by his preposterous practice” and can it be supposed, after all this, that his writings were directed against the Doctor for his eminent skill, and that it was honorable to him? No, we can trace it but to one cause—*private, personal malice*, without the least regard to public duty, or public good. He declared he would attack, but little did he expect that this avowal would ever come against him.

“Let him withdraw his action, or I will persecute him while *living*, and his *memory* after he is *dead*.”

What an heart has this man? My colleague has been blamed for keen expressions, and violence of attack. But what is violence? Gentlemen of the Jury, I wish you to remember that what is violence without evidence, is truth with evidence. To call murder only assault and battery would be a perversion of terms. To call malice, “*fun*”

is as much so. To say that the defendant had malice at heart when he used these words, I therefore contend is evident without a doubt. Perhaps he used this violence for another purpose. I could name a person who fell a victim to the malice indefatigably thrown at him through this very news paper. A man that should use such threats, could not be supposed to use his weapons but to the most base intentions. And shall a man of this base disposition teach Americans politics? Shall this man deal about the Theorems and Aphorisms of the medical art, and examine systems of practice which he does not even pretend to understand? Can there be any case of malice more express than these words convey, or a better key found whereby to explain his writings? If express declarations are ever admitted as proofs of the meaning of writings, (and certainly they are) there can be no doubt, here, of the existence of the overt act in six or even eight instances: if it was possible to give a more bright coloring to the transaction, it was done by the subsequent publications in which the respect which every man owes to the Law, is highly violated.

We live in a land where the public transactions, and the officers of government are to be regulated by written rules; these are well known; these rules give to the people their duty of obedience to the Laws, and submission to the higher authorities; it limits to every man in society, how far he can go; it punishes transgression in the one class, and violation in the other. If any individual, therefore, shall dare transgress these laws, he subjects himself to the punishment they inflict. Therefore if any action is brought against a man, he is not thereby to be irritated! Upon the doctrine advanced by the honorable gentleman, as imprisonment would undoubtedly irritate any man, he would have a right to break prison, and murder any persons who should stand in his way. An action would be a great irritation if justice was less certain than we happily enjoy. Well, instead of submission to the operation of the law, what does he do? He continues to issue out from his press, new libels, calculated to increase his crime. The suit was commenced in the beginning of October 1797, the whole of the publications of the 5th, 7th and 20th of October were subsequent to the commencement of the suit. Can there be a doubt, then, that the true cause of Mr. Cobbett's publications against Dr. Rush, originated, not with a view to improve the medical practices, but to disgrace and vilify the individual? Was Cobbett capable of judging of, or is he acquainted with the structure of the system, or its relative parts? Can he point out how the different treatments operate on that or any other disease? Can he show how a certain mode of administration would relieve one, while it would destroy another? Was he skilled in the science of anatomy or medicine? He does not pretend to be; Nay, he declared that he had no knowledge of it at all! He plainly confessed that his essays were not to inform the public mind, but to ridicule a certain system, for he supposed no-body would take notice of his writings. Gentlemen, his hardihood has left every act and declaration upon which he is called to answer, or which proves the charge, without a single equivocal on which the mind of any man can hesitate.

We do not contend that Dr. Rush has established the true mode of practice

practice : he thinks so, and has given to the world his reasons for thinking so. But the case does not rest upon that point, it is all one to you whether his practice is right or wrong. Did Cobbett say that he knew a better mode? No. He endeavoured to rife a public laugh upon Dr. Rush, and put him forth in a most degrading point of view, at a moment when drooping humanity found no longer a basis in its own surface; when the state of the city was enough to appal the stoutest heart; when the confidence of men in general was placed on the advice of this man;—at that moment his reputation is pulled down; his mode of treatment, almost the only one then practised, is destroyed, and no effort is made to put another in its place! Dr. Rush does not pretend to say he is right; he thinks so: But the superior genius of Cobbett does presume to declare that he is wrong, and that he has killed his tens of thousands, though at the same time he declares he does not know whether the mode is right or wrong. The true system is not discovered perhaps, nor ever might be: it might be like the dreadful earthquake that desolates the world, no means ever found to arrest its awful progress. It lies behind a veil through which the human sight cannot, and never might penetrate. But our duty and our interest requires that, though we may never find the cause and cure, we should be indefatigable in our endeavors to do it: perhaps we may only find the mode of avoiding, by keeping out of its way. But is it probable we shall ever be able to discover any means of prevention or cure, if the man who stays making those researches in times of imminent danger, in addition to the natural alarm distracting his mind, which mind at that moment ought to be the most strong and penetrating, to spread all its sails and catch every, even the most minute idea—How, I say can we expect the fever to be subdued, or kept away from our doors, if an individual shall be suffered to vend his malice on such a man at a period so momentous? Suffer that with impunity, and no efforts will ever in future be made to appal this foul destroyer, no man will fortify himself for the illiberal attack. Gentlemen, consider this in a public, or in a private point of view, can there ever be an instance in which a plaintiff can come before you more entitled to your just verdict, or a defendant with less claim to your verdict? Can a case occur in which there is less to plead even for extenuation or excuse of the crime? Gentlemen, reputation is sacred: an injury done to honor can scarcely be redressed. How can youth acquire prosperity or affluence, or age respectability, if that character, which is the foundation of success in every profession, may be attacked with impunity? If upon property there is protection, but there is no protection for character, justice is but partially administered, and it is time now, if for the first time, for an American court of justice to show the world that character is property, and a property most sacred. But I hope our courts of justice have proved this whenever called upon so to do. Who can say when a man is attacked in his reputation how numerous the clinks through which he may sustain injury? When this shaft is directed by malice and ridicule, how are we to depreciate the value of the injury done? How much might it not prevent a young man progressing in business? And does the attack upon age lessen the crime: a time when

the experience is matured, and studied labors become eminently useful? Who knows but this scandal might have prevented thousands from applying to Dr. Rush for advice? We see the defendant stand upon the high ground of boasting of his income, from the number of persons who bought and read his papers: we may thence conclude that this slander extended very wide, and therefore to attempt at forming an estimate of special damages, would be fruitless. To prove this negative, would be impossible, and therefore cannot be expected from us, for who would come to Dr. Rush and say, "I should have employed you, had not I read such a character of you; you have murdered thousands, and therefore I could not trust my life with you." To estimate damages must be your province agreeable to circumstances.

Gentlemen, the question of damages often came before the courts in England, of which we have some accounts in the books, and they are not always guided by pecuniary circumstances, but more to enforce the law, and show example. The law has there estimated the fine for seducing a man's wife at ten thousand pounds sterling. Here is no pecuniary injury sustained, but a very heavy fine laid; for often it may happen that a man has a bad wife, and her loss is a real profit to him, but this is not the measure of the fine. Though less than that sum is usually laid, yet it is always exemplary. We find other cases mentioned in the books. 2 Wilson, 206. A journeyman printer, in the office of the North Briton, was seized for publishing No. 45 of that paper. He was seized by an order of the secretary of state, and detained but six hours in custody, and during that time treated with beef stakes and beer. On examining this in a court, to which it was referred, the jury gave 300*l.* sterling damages. The fact was, not the pecuniary injury sustained by the man was considered, but the political consequences—the liberty of the subject, and therefore the award received the approbation of the court. In 244 same book, 1000*l.* was awarded for a false imprisonment of six days; also p 252 there is a case of assault and battery. In all these, the consequences were considered. 3 Blackstone 126, notes there was 4000*l.* damages laid for a reflection on the chastity of a lady. These, gentlemen, are instances of exemplary damages, and that is what we ask for in the present case, by your verdict. Doctor Rush has a wife and children arrived to ages capable of reading newspapers. Can any man set by with patience, when he sees his children crying, or his wife in tears in consequence of the perpetual newspaper abuse lavished upon a tender husband and a loving father?—abuse and reproach the most heart-rending—no less than a murderer and a quack. Suppose yourselves for a moment in his situation, and say whether the measure of this newspaper libelling ought to be confined merely to the damages any individual could sustain from it, or whether it ought not to be made a public example of, on account of the principle. It is high time to rescue the American character from the indifference which has too long prevailed amongst us, while we see the characters of our unoffending fellow-citizens consigned to infamy. If it has hitherto been too much disregarded, let not this be so, for surely it is time to punish crimes so daring. This man has declared, that he would "persecute the defendant while living, and his memory  
after



after his death." How can you check this vindictive spirit, but by timely and exemplary punishment? Let him be taught that he has wantonly attacked, and that with cool deliberate malice, an unoffending individual, and though he has removed himself out of the jurisdiction of this court, yet that he is a marked man, and that a respectable jury of Philadelphia have studied only principles of truth and justice with impartiality. Let others be taught by his punishment to avoid his offence.

On the other hand, let not Dr. Rush be a marked man for defamation, and his name be remembered with scorn. Let it not be said to him "your character is so infamous that no slander can defame it." Nor let it be said that the immaculacy of character, against which he drew his shaft, was such as to excuse or protect the insolent offender from damages. If Cobbett has never injured the character of Dr. Rush, it is evident he has attempted to do it, and with his utmost efforts—but I think he has injured it. He certainly has wounded his feelings; he has hurt his health, and he has wounded him in his family. There cannot be a doubt but he has wounded his fame and reputation, and of course his pecuniary interest. As I think you must be of the same opinion with me in these particulars, I shall content myself with confiding this case to you, and as I am sure nothing in the conduct of Dr. Rush has merited such infamous treatment, so sure am I you will do him satisfactory justice.

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## MR. TILGHMAN

READ a letter written by Dr. Rush to Dr. John Rogers, from the Philadelphia Gazette of October 3, 1793, in which he describes the symptoms of the yellow fever then prevalent, and also the method he conceived the most proper to cure it.

He also read extracts from two pamphlets lately published, containing observations on the origin, &c. of the malignant billious or yellow fever.

MR. LEWIS read extracts from Porcupine's paper of October 19, and 21, 1797, wherein are extracts from Gil Blas, where a conversation occurs between Gil Blas and Sangrado. The latter extract is headed thus: "To Doctors Rush and Caldwell."

MR. TILGHMAN then addressed the jury as follows:

*Gentlemen of the Jury,*

I AGREE most heartily with the council for the plaintiff that if you came into the bar, previous to being sworn with any prejudice whatever, you ought to lay it perfectly aside, and consider the cause, which you are called to try, fairly between man and man: you should come with minds, in the language of the law "like blank paper," and receive such impressions only as law and evidence must make.

William

## IMPORTANT TRIAL.

William Cobbett, my client, though an alien, is entitled all the advantages which law and justice can bestow ; and if he can satisfy you that damages ought not to be recovered from an *American* standing in his place, no damages are to be given against him.—The plaintiff demands damages of my client for certain publications written by him, said to be libellous, on his professional reputation and character, to support which much has been said, but what deserves particular notice is, that the plaintiff's council are *tremblingly* alive as to the character of Dr. Rush, while Mr. Cobbett is treated in terms utterly destructive of all character and reputation.

This was not what I expected in any case whatever, and especially from the gentlemen whence it came, whom I much respect. Gentlemen, you are not to pay regard to the contemptuous light in which the defendant is held by the plaintiff's council: you are not to measure your verdict by their repentment. One gentleman in order to show the contemptuous light in which he holds Cobbett's opinion, has said he must extend his duty beyond the ordinary limits. There can be no doubt but his zeal for his client induced him to go an extravagant length, or he would not have filed the defendant an assassin (which he has twice done) and a noxious animal thrown up from the very dregs and slime of obscurity, a being which has no equal in society, taking his tigers strides to do mischief, and guilty of every species of editorial pollution. Farther he condemns him for his *litigious* disposition. Where, I ask is the evidence of this disposition? It is not before the court, nor has it appeared in his conduct, for he has not appealed to the law to redress his wrongs, but has used another weapon, his pen. So far has my friend's zeal carried him, that he declared he could name an individual who was brought to the grave by this man's publications. These are vague and unproved assertions: words which have no tendency but to inflame your minds, but I can only impute it to a zeal, the improprieties of which they know as well as I am able to inform them. May we not suppose, after all this that Mr. Cobbett is a man more sinned against, than sinning? For while abuse and detestation is his lot, Dr. Rush is daubed with praises so lavishly that he must almost have blushed to hear them. He was compared to Hypocrates, at Athens, having done so much as to be entitled to public thanks, and yet the public are much divided as to the efficacy of his means of treatment, but more particularly so as to his opinion of the origin of that fatal disease.

Further. The defendant is said to be an alien, and to owe no allegiance to our government, and that his discussions of public questions show the *cloven-foot*.—With respect to country, it is a principle that every *alien* who comes here, does owe allegiance—a temporary allegiance. So long as he stays to receive the benefit of our laws, so long he is answerable to them, and is bound to respect them. I am far from contending that the defendant is immaculate or infallible, yet I must say that he is not without some merit. He certainly did, (whatever his motive, whatever *cloven-foot* he might have had concealed) at a critical period, give a very reasonable and proper alarm to this country; an alarm which did much towards uniting our citizens in an attachment to preserve the honor of our country, and which  
tended

tended much to rescue us from European influences and attachment. As he began, so he persevered, and we are not without experiencing its good effects. Twice were bills of indictments sent to grand juries, who proved his innocence of the charges exhibited against him by his opponents, by returning both of them *ignoramus*. However, all this is foreign to the question at present, but the plaintiff's council having departed to *derogate*, we may be allowed to *extenuate*.

I agree with Mr. L. in his statement of the law; he certainly has stated it with precision and accuracy, and I must do honor to his talents and candor. It formerly became my duty to state to this court, that every writing is on the face of it independant of collateral matter (which does not appear upon the face) either criminal or innocent.

First, If it appears on the face of it to be innocent, or not libellous, still it becomes criminal and libellous, if written with a particular *intent of a criminal nature*—then such intent must be proved.

Secondly. If it appears, from the face of it to be criminal or libellous, there may, from the occasion, be justification or excuse.

In each case, the criminality or innocence depends on collateral matter, not appearing on the face of the paper.

Lawful excuse is justifiable either in legal proceedings;—Representations of an injury, &c. even when the publication is in a newspaper: From a sense of duty, and not with a malicious *intent*:—Or in confidence, or with a view to reform and amend.

Generally. *Publications must include MALICE or a CRIMINAL INTENT either express or implied.*

I agree that if the jury should find the words themselves to be libellous, then the plaintiff can recover damages, to prevent which, it would be his duty to show that the intention was innocent.

A case to exemplify these doctrines, is found in 2 Burrows, 807. "This was an action upon the case for speaking and publishing defamatory, false, malicious and libellous words, of and concerning the plaintiff, Sir John Astley."

The defendant applied to the plaintiff (a justice of the peace) for a tavern licence, and was refused: on which account, words were used by the defendant, which were supposed libellous.

Lord Mansfield in the case spoke thus, page 810:

"The charge against the defendant is made upon oath, and supported by the affidavit of Sir John Astley, and of the *defendant in answer* to his complaint: he mentioned the charge, and denies it with this conclusion, calling it "what Sir J. A. has so FALSELY sworn against him."

"Now in every dispute in a court of justice upon oath, where *one by affidavit charges a thing*, and the other *by affidavit denies it*, the case is, ordinarily, *much the same* (in effect) with the present, and each party might bring a civil action against the other; for it too often happens that the affidavit and evidence *are* in terms DIRECTLY OPPOSITE each other.

"As to the reason of the thing, there can be no SCANDAL if the allegation is *material*, and if it is not, the court before whom the indignity

dignity is immaterial scandal, may order satisfaction, and expunge it out of the record, if it be upon the record."

Thus we see that though the defendant was charged with swearing that Sir John Astley had "forsworn himself, and he (the defendant) would not do it for his whole estate," yet, although the expression "falsely" was rather *too rough*, it was not taken notice of.

I must agree with the gentlemen, that had I been engaged in opposing Dr. Rush's opinions, I should have deemed it very improper to have used such *coarse* expressions. This brings me to a more close and immediate view of the subject.

The fever of 1793 you well remember. Dr. Rush staid in the city, no doubt, from a sense of duty : no doubt this operated strongly with him, but it cannot be supposed that he had no sense of the profit : he expected to be paid for his labor, but notwithstanding that, his exertions did him very great honor. I do not pretend to justify such an attack on the system he practised, but I do not think that condemning the *system* was libellous. I am sure that when he came to take even 70 or 80 ounces of blood he was under the most perfect conviction that it was necessary to save the life of his patient, and that in all his practice he was actuated by the most honest motives. But the most sensible, ingenious and ardent man ; the most indefatigable in his exertions, is most strongly impressed with new systems and ideas, when they come plausibly supported. Inquisitive minds, like that of Dr. Rush, are not of a cast to boggle at adopting strong measures, especially when convinced of their utility. To us it was new : the use of mercurial purges and bleeding, to so vast an amount, was entirely unheard of by us, and therefore it was no wonder that the practice should spread an alarm of nearly as serious a nature as the fever itself.

Doctor Rush was so confident of the success of his system, that in a letter addressed to his fellow-citizens on the 12th of September, 1793, he assures them "there is no more danger from it, when these remedies "have been used in the early stage, than there is from the measles or influenza." But with all his success, and though he stood *foremost, and nearly alone*, as his counsel say, there was a destruction in that year of nearly 5000 persons. Notwithstanding so many perished, though he stood almost alone, and notwithstanding the novelty of the remedies, and the great applications of bleeding and mercury, the public mind was extremely agitated and divided as to the efficacy of them. What was still more extraordinary, there is no man whose persuasive softness and tenderness of manners is more likely to attract the confidence and acquiescence of either pupils or patients than those of Doctor Rush. But stories of bleeding and purging were much exaggerated in the relation, so as to harass the public mind extremely. Indeed the physicians themselves were much divided, and even parties were formed to support the different systems. The event of this was a creation of animosity and newspaper contention. Of course this increased the public alarm, and dreadful was our situation. One set of Doctors contended this was the true mode, and the other another. In this state of uncertainty and indecision things remained until the fever again unhappily broke out in 1797, and with it the Doctors' quarrels, on account of which



which numerous publications issue forth. Nor even were the respectable learned institutions exempt: the College of Physicians and the Medical Academy. I believe the difference between those bodies still exist.\* Doctor Rush said again, and much to his honor. It is said that the great point for which he said was frustrated.

Gentlemen I ask by whom it was frustrated? Can it be believed that it was frustrated by Cobbett? Whose opposition to Dr. Rush was most serious, that of Cobbett, or that of the Doctors? As you are not sure it was by Cobbett, but must have good ground for believing the other more *potent*, there can be no doubt where his disappointment originated. Or, I would ask, was it frustrated at all? No doubt the Doctor did much good by staying, and as the dispute was so undecided, I do not believe that any person would be prevented from applying to Doctor Rush for assistance on account of Cobbett's publications.

In September 1797, out comes Cobbett's first publication. I do not mean to vindicate the manner of the attack, but my client has been charged with calling the defendant a *murderer*. Now, Gentlemen, I appeal to your consciences, can any man who reads the publication look upon it as any thing like a *serious charge* against Dr. Rush as a *murderer*? I am very sure that you will all allow with me that he meant no more than a ludicrous attack upon the system of which he certainly was the head.

What is murder? It is to kill a man by *malice prepense*. It cannot be supposed that the defendant had an idea of so serious a charge. There were numerous skirmishes among the Doctors, and he skirmished among the rest with the only weapon he possessed: *Ridicule*. In this sense "ridicule is surely the test of truth," however the ingenuous gentleman may have used it. I ask, then, did this proceed from *cool deliberate malice*, or was it ridiculing a system which he supposed to be ill founded? If he had meant that Doctor Rush went on murderously rejoicing at the direful effects of his system, it surely would have been a libel of the most egregious nature, but the idea cannot be proved, even by the greatest ingenuity. That William Cobbett had a right to attack that system or any other we contend is indubitable, however small the stake he had among us, or however short his intended stay, if he used no improper words in making that attack. I allow, with Mr. Levy, that it is incumbent on the Defendant, when brought into the court, to prove that he did not use the words with an evil intention; with respect to this, we contend that if he exercised his abilities with a view to the public safety, he exercised them not only innocently but laudably. I submit to you that the publications include no design to render Dr. Rush, in his person odious, or to injure him in his business. However free he has been in his attack upon Dr. Tilton, or any other person, he has here only attacked *mercury* and *blood letting*. If he ever disapproved of the private character of the defendant, he has not exemplified

\* The difference was explained to exist at present only as to the origin, whether by importation or of domestic source. With respect to treatment they now both agree with the system of Dr. Rush.

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exemplified it: the physicians were the main battle, and great was the shock, but Cobbett was a mere skirmisher, on the practice and not on the man.

I speak in reference to the publications mentioned in the declaration, for though the plaintiff's council have a right to read any other publications, it is only to shew the *quo animo*, or design with which the others were written.

But the malice of this man is said to be *deep, antecedent, concomitant and subsequent*.—All this I deny. The testimony of Dr. Dewees is called to prove that it was *antecedent*.—Sometime in 1796, Doctor Rush delivered, on occasion of the departure of Dr. Rittenhouse from this life, an *elegant eulogium*—too *elegant* to be forgotten.

However, there was some little of that sort of *spice* in it which was not pleasing to Mr. Peter Porcupine. It was *too republican* for his taste. I do not know what Dr. Rush's political sentiments are, but if they are of one sort, I should dislike them as much as Cobbett. If of another sort, I should approve of it, and perhaps not think it *too republican*. But that is to be no measure for him; he had a right to attack them. In a conversation about the merits of that eulogium, he says "Damn him, I will attack him for it." This, to be sure is very illiberal, but he did not say in what way he would attack him, or that he meant more than to attack him as a political man. There is no evidence of any private malice that *Peter* had in his heart, nor can it be contended that this eulogium was the ground of his attacks, mentioned in the declaration, for had it been so it would not have rested so long in silence as from January 'till September. No, from the representation of gentlemen themselves, he was of too combustible a matter to keep it so long. If it made any impression at all, it was not solid, for if it had, I think it would have been out of the power of *bleeding and drastic purges* to do it away. He was angry, and expressed his anger in a very coarse way. Well—In September came the attack. Is it into the *man* or the *system*? It has appeared that Dr. Dewees practised upon the system of Dr. Rush, and yet he attended Cobbett's family. This is brought to prove the man, and not the system was the object of attack! I ask whether, if there had come an alarm of the fever during Dr. Dewees's attendance upon Mr. Cobbett's family, he would have been suffered to use Dr. Rush's system? If that had been done, then indeed there would have been reason to conclude *the man* was attacked. I cannot but consider this circumstance respecting the Eulogium to be an attempt to draw the attention of the Jury from the real merits of the case, tending to establish a belief that there was deep settled malice, which he kept in his breast during that period, growing deeper and stronger in proportion to the time it existed in the mind, and therefore, gentlemen, you are earnestly instructed to give verdict for the plaintiff. On the same account also, the question is asked why Cobbett should wish a reform in medicine? and it has even been hinted that he might wish to leave the disease without a cure, and might not be displeased with the misfortunes of Philadelphia, because it would diminish the commerce, and probably serve his own country. This surely is too much to say of any man, but tho'  
serious

serious, I have no doubt you will put the whole of these *insinuations* upon a candid footing, and decide only upon *facts*. As to his wishing to leave the disease without a cure, it is absurd, for he stayed in Philadelphia during the fever of '97, in which situation, he subjected himself to be the first victim of his own envy! This is what I think you will scarcely believe.

In the evidence of Dr. Mease it appears that Cobbett made use of a very intemperate expression, but having been sued, he might be idle enough, knowing himself to be master of a very bitter weapon the pen—he might think he could thereby induce Doctor Rush to withdraw his action. If so, he was guilty of a very great misconception. He was very wrong, but I rather think it must have been the effect of haste, without any evil intention. Gentlemen, upon your oath, try if you can couple these words with those spoken to Doctor Dewees! I think you cannot.

As to the words to Mr. Cox, I am of the same opinion with Mr. Harper: that he would “not have written against the system, if Dr. Rush had not been the author of it.” It was paying a very great compliment to Doctor Rush. This appears to have taken place about the time the suit was commenced, and to have been pressed upon him by Doctor Cox. Doctor Cox himself seems to believe it to be an attack upon the system. His view was no doubt to preserve the life and health of his fellow creatures, many of whom, in his opinion, suffered from this mode of treatment, and therefore he did his utmost to point out the danger.

Upon this part I shall not remain longer, since I think neither “keen, private, nor personal malice,” as has been pretended, can be proved. Gentlemen view the whole together as Mr. Levy said, and if you see all this “fixed, keen, private, personal malice” against Doctor Rush, then you must give verdict for the plaintiff. But I consider that the great alarm which existed in the public mind at that time, many deeming the practice in question to be no less than poison, and death—If such was the alarm, and such the apprehension, for which I appeal to your recollections—then, I say it was not improper to point the shaft of ridicule against the system so replete with danger.

But, Gentlemen, suppose you should be of opinion that the Plaintiff has been injured by those publications, and damages ought to be awarded, the next question that occurs to you is *what ought those damages to be?* It has been a question asked by the plaintiff's counsel “Who knows how many have been prevented from applying to Dr. Rush?” How a negative can be proved I cannot conceive; neither he nor I can tell *who has been prevented*; that is entirely in the dark. Doctor Rush's Counsel, when they drew up the declaration drew it upon special damages. Near the conclusion of the declaration are these words! (*The said Benjamin*) is also thereby greatly prejudiced in his business practice and profession of Physician, and practitioner as aforesaid, *many persons have been induced to withdraw their confidence from the said Benjamin, as Physician, aforesaid, and the following persons, who were previously accustomed to employ the said Benjamin a Physician as aforesaid to wit:*

"The *mountains* are in labour, and a ridiculous *mouse* creeps forth!"!

Where, then, are the instances in which Doctor Rush has received damages? Wherein is he injured?—all the industry of those Gentlemen could not find out special damages, or a customer withdrawn. It appears that such was Dr. Rush's reputation, that he is not injured. You know what this reputation and character is at present. I do not mean by this that, if you discover the expressions to have proceeded from *malice* you are to give any damages; but you must be guided by the injury sustained in a great manner. Has not Doctor Rush from 1793 to 1797 and from 1797 to 1799 been in as great business as he could do?

Plaintiff's Counsel.—We say No.—We can prove from his books that his business has materially lessened since this newspaper attack commenced on him.

Mr. TIGHLMAN.—It is said that Mr. Cobbett violated the law by subsequent publications. I grant that, from the moment the suit was commenced he has done wrong in doing or saying any thing until the trial. So far he was liable to punishment, but not in this way, nor at this time. He was liable for contempt of Court, and if Dr. Rush had complained, he could have been committed for that contempt. The moment a suit takes place the law says the parties ought both to be silent, *because everything ought to come before a Jury*, who shall not have their passions raised, or be prepossessed in favor of either party. Therefore, this does not prove that he shall recover aggravated damages.

One of the Counsel has supposed libels to be the sources of numerous evils, and laid down the position that to secure good government you must punish libels severely; thus severe punishment would be the best criterion of a good government! I trust this will never be a law principle; that no person will ever be punished, not even an *alien*, to prove how good the government is. How fatal would be the administration of Justice if this was law! To what severities would it not lead!

It has been said, that you are the uncontrolled Judges of damages. In matters of debt or property, there can be no difficulty as to the estimate of damages proper, and then the Court will not suffer what is easily perceivable to be an extreme award. But, in civil suits, as in an action for Slander, when damages are uncertain, and difficult, the ascertainment of those damages are more peculiarly the province of the Jury, though in that they are not perfectly uncontrolled; but the Court will not grant a new trial, unless the damages given are "outrageous;" unless, "at the first blush, all mankind would revolt against it." Farther, they are not uncontrolled, because they are to consider the Plaintiff's suffering, and the Defendant's ability to pay. Would you give against William Cobbett the same damages as against a man with an hundred times the property? Surely not. You must consider the circumstances of the man. There has been no evidence adduced in respect to the circumstances of the defendant, but it is a rule in Courts to fine the party *not to his ruin*.



The Counsel has told you, that if a Physician's character is suspected, it is ruined. Then may I say that Dr. Rulph's is not only not ruined, but in as high credit and reputation as can attend a physician, and therefore not even suspected, and if not suspected, he is not injured.

It has been said, that if damages were not given sufficiently high, persons would take the law into their own hands, and the Jury must take the consequences, therefore you must give high damages to avoid being implicated yourselves! Gentlemen, pay regard only to justice, and leave the consequences; measure the degree of injury received on the one hand, and the ability to pay on the other, and thus estimate your damages. Remember, that although the doctor may have a right to damages, his reputation will not in the least be affected by your not giving him *large* damages.

I pass by the gentleman's appeal to the just heavens, and his piteous scene of crying children and a weeping wife, because I know you can only estimate this as an appeal to your passions. I shall, therefore, only proceed to examine the cases referred to you.

The case in 2 Wilson 206 was a flagrant violation of the liberty of the subject, by unjust imprisonment, and 300*l*. was not too high an award, though the imprisonment was short, and the treatment good. The Secretary of State was there exercising arbitrary power by taking the man up upon a general warrant. Thus it struck the jury. "To enter a man's house by virtue of a nameless warrant is worse than the Spanish inquisition: a daring attack;—an attempt to violate *magna charta*," said Lord Campden.—A more dissimilar case to the present cannot possibly be cited.

The other case p. 244 of the same book is also on a general warrant. The case 252 called the turtle case, was an unprovoked and unreasonable assault and battery, where the damages ought to be great, but the defendant was able to pay.

It is disagreeable for me to make any observations on the letter which I was impelled by my duty to read at the commencement of my defence. You will collect from that letter a few ideas which I think may prove that the Doctor has not only been intemperately, but uncommonly severe upon every one who had the misfortune to differ from him in practice. He has said "As well might there be two suns or two moons, as to suppose that two sorts of fever prevailed in that year," although so many different symptoms made their appearance. His treatment of the Health Laws is extremely severe, he does not only speak against the physicians, but against the Legislature itself. One solitary instance of good might happen therefrom, but upon the whole he declares the laws very destructive. Though he does not handle the objects of his attack in strains so strong as Cobbett does, yet he is extremely severe. If he suffers himself to be led to such great lengths in his attacks, upon his brethren, the Physicians, and upon the Legislature itself, I trust you will not consider him entitled to as great damages as though he had been silent.

Gentlemen, with these remarks, I leave the cause to your decision, and repeat that I hope, if you should consider the plaintiff deserving of *damages*, you will consider how little injury he has sustained, and what

## IMPORTANT TRIAL.

are the defendant's circumstances; but I trust you will believe, with me, that none of these publications flowed from malice, and that nothing in them was meant to injure the Doctor as a man or as a Physician, but to attack his system. If these are your opinions, you must give a verdict for the defendant.

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MR. INGERSOL.

With your Honors' leave.

*Gentlemen of the Jury,*

THE Counsel for the Defendant have dwelt much on an observation which is very trite, but certainly very true; that the understanding is not to be trusted when the passions are engaged.

I will therefore endeavor at present, to suppress my feelings;—the honest indignation which, in spite of my efforts is ready to burst forth; and examine calmly the facts; I will approach your passions through the fair and honest medium of *your understandings*, and if I succeed, as I think I shall, in shewing that every *tittle* of our declaration is supported by the clearest proofs, then I contend that your sensibility ought to be excited. For, give me leave to say that any man who can believe the testimony we have produced; he who reflects on the particulars stated, with a full conviction of their truth, and then remains wholly unmoved, must be callous, and lost to every honest sentiment of humanity.

What, Gentlemen, is the nature of our complaint? Is it of a common, or of a peculiarly aggravated nature? Wearing himself out in the duties of his profession, the Plaintiff, like a saving *Angel*, arrested the arms of Death, exposing himself, when it was difficult which most to admire, the profundity of his professional skill, or the vigor and benevolence of his mind, that bore him up against the dread of infectious scenes, which the stoutest Hero could not have approached without trembling. While thus employed, the foul attack is made; he is announced to the world as a "Quack—Empyric—Potent Quack," and "Grand Empyric," and the confidence of his Patients is withdrawn; he is represented as either by design or ignorance, destroying "thousands and tens of thousands" of his fellow citizens. He is represented by this printer, as the exterminating Angel, going through the streets and heaping dead bodies on each other, and practising little arts and tricks to support his reputation, which would disgrace even a mountebank.

This is only an Epitome—The particulars I will detail to you as I go along.

One of two things you must do; you must either say that the character given by Cobbett of Dr. Rush—that he is a Quack, Mountebank, &c. is just, that he has, either from ignorance or a bad motive, destroyed

stroyed his fellow citizens, and deserves to be banished not only this city, but society ; or the alternative presents itself—You must believe the suggestion is false and malicious, that his well earned character has been wrested from him, for which the offender should pay damages ;—compensatory they cannot be—but exemplary—such as should mark him hereafter as the most aggravated calumniator, and detestable of characters : one whom neither sense of honor, of duty, or of propriety will restrain. Let the offender know that though the Law has *Lead*en feet, yet it has *Iron* hands : that though slow in its operations, it is direful when once it catches its prey.

The charge consists of these particulars :

First, The Publications.

Secondly, Its Falseness.

Thirdly, its Malice.

With regard to the publications, when you take the papers out with you, you will find them to be a *burthen* of defamation, so that his press groaned under the weight of—not to say “ ribaldry ” but the most severe, atrocious and indecent personal abuse. You will please to observe that in this instance we do not pursue a *Journeyman* Printer, as in the case of Gen. Hamilton at N. York. There was some pretence urged for pity ; but here we bring before you the Printer and Editor ; not the printer only, who may suffer an innocent victim, from the concealed name of his correspondent, whom a sense of honor may induce him to secrete, but the editor himself, who made it his constant practice to *villify* and traduce the unoffending, and in these instances, the man whose upright conduct, and useful labors would have been supposed to remove him far even from *suspicion* of ill fame.

Instead of resorting to an Indictment where Dr. Rush might be a witness, we come fairly into the field with an action which puts the parties upon an equal footing. The question is not now whether the truth may or may not be given in evidence, but we invite the conflict. If William Cobbet can substantiate any thing against Dr. Rush, he may now come and do it ; or he may come and justify himself if he can, but *that* he pretends not to do ; the publications are not denied, although loaded with such atrocious *villainy*.

The defendant had his choice to *take* one of several courses ; he might say all these things were true, and pretend to substantiate them, or he might say he did not mean it as it has been construed ; or he might say “ I have been very rash and unguarded in my treatment of an injured man, and upon reflection, I am at war with myself as much as you can be with me.” But what has he done ? He has undertaken to justify himself in the acts. I appeal to your honors whether it has not always been the practice in Pennsylvania, when a defendant has not endeavored to prove his disavowal, but persisted in a justification of himself, and aggravation of his offence—whether in such a case, the guilt appearing plain, the jury does not always give *exemplary* damages ? One of his Counsel speaks of Dr. Rush as all but super-natural—another *hints* and insinuates, and damns by saint praise ; and a third

third acknowledges that the publications contain many untruths; that they are "*Stuff, Nonsense and Ribaldry*;" but he wishes to ease his client from the *legal* consequences. If he contends that we do not put the right meaning upon his publications, then it must at last be left for us to understand their true meaning, except he can convince us otherwise. I therefore ask you Gentlemen, where there is any thing to *justify* or  *palliate* or whether they do not come up to the very *climax* of abuse and vulgarity, more than I hope will ever appear again, either in this, or any other country.

A perfectly accurate idea of these publications, then, becomes indissolubly necessary; and here, so far, I will accede to the wishes expressed by my learned opponents. I will not wander from the publications; they shall form my text, and I will keep close to it.

I will analyze it; I will dissect it; I will contemplate it in different points of view, and reason upon these points; I will follow the defendant through all his windings, and at every turn prove malice upon him. These publications furnish an exhaustless fund of observation, and should I speak a week there would yet remain more to be said.

Two positions stated by the first Counsel who spoke for the defendant must be kept constantly in view through this cause: That Doctor Rush dispensed his medicines, and administered the healing art to the best of his great abilities, and without even suspicion as to his integrity.—That the defence rests upon this ground that the defendant has made a public discussion of a question of general concern, free from personal abuse of the plaintiff's moral or professional character. The gentleman then, as if apprehensive that his concessions might furnish a weapon against himself, immediately adds that a little acrimony mixed with the disquisitions does not render it scandal, and that *acrimony* existed even among the Physicians themselves.

Much depends upon what name we give a thing. What the gentlemen call *acrimony*, I call *slander* and personal abuse, with a deliberate design of demolishing the reputation of Dr. Rush.—God's Providence is by some called a *lucky hit*, Piety *superstition*, Seduction and Debauchery *gallantry*, violence *spirit*, and the whole store-house of *defamation*, here ransacked for epithets of reproach, is denominated *Acrimony*! We may call any thing by a *soft* name, but that does not alter the nature of the thing. The Counsel in admitting the eminence in point of skill, and the purity of Heart of the Plaintiff, takes from the defendant all possibility of defence in attempting to lay its foundation. If Doctor Rush is thus deservedly eminent, and if there can be no suspicion of his integrity, and he has acted so uprightly in his attendance upon a disease, the most fatal that ever Providence inflicted upon a guilty world, with what temper ought a man to come forward and speak of him? Certainly it ought to be with much deference and respect to his character and conduct. But even supposing he did fall into an error, shall he be held up to the world as the most remorseless of murderers?

We are told by the learned counsel on the other side that "*Ridicule* is the test of *truth*." I deny the position. This was the favorite position of that Arch Deist Shaftesbury—driven from the field of *Rea-*



son and *Argument*, this was his only subterfuge in his attacks on Christianity. It is possible, to be sure, to render *truth* a *ridicule*; in the same manner you may dress a wise man in a fool's cap. This maxim, so long ago exploded by the greater part of mankind, must now be revived—its revival is worthy of the cause of the defendant!—The very gospel of Heaven, by distorting its sense, and by partial representations, may be made to appear ridiculous: But this is no test of its intrinsic merits.

The law, however, has resolved this question: "*You shall not, by a libel, or by writing, set a man in a ridiculous light*"—the reason forms a part of the rule—it goes on, "*and thereby diminish his reputation.*" 3 Blackstone 125. The same doctrine is exemplified in the other books, and the law says expressly, that "*you shall not make a representation even to impute to a man BOASTING and VAIN GLORY.*"—This is a principle laid down in Hawkins. Slander endeavors to creep behind every covert battery, and assumes every form—sometimes it even pretends to praise and commend a man, for the very purpose of introducing its venom. Gentlemen, the law says this is a libel; judges have said so throughout the annals of every court, and shall *we* and *juries* affect not to understand what every illiterate man understands to be libellous?

The principle of innocence in these publications, on account of their pretended disquisitions on the yellow fever, is not just; but if it was established, it would not help the defendant. What discussion on the system, or what respecting the treatment, or what that tends to shew that system to be *ridiculous*, do you find in these publications? I will defy the counsel to point out a single syllable either as to the *nature, origin or treatment* of the yellow fever; not a word even to ridicule the positions laid down!

Does the ridicule appear to be aimed at the *system* or the professional reputation and character of the physician! that, says Mr. Harper, is the question. You may not, says he, combat the system by destroying the reputation of the practitioner.—So far we agree. To this test, thus furnished by the opponents counsel I appeal.—If the defendant did enter into the nature and application of the remedies, I am quite uninformed; but I think he did not. Let us see how he attacked the system and not the man, as is pretended. The first publication introduced begins with two lines, wherein it is represented that Dr. Rush is one *quack* holding conversation with another. Now, gentlemen, I would submit one question to your understanding:—is it the system that he calls a *Potent Quack*, or is it Dr. Rush? Is it the system that he has stigmatized with the degrading epithet of *Don Sangrado*, or is it Dr. Rush personally?

Who was this Don Sangrado?—Mr. Harper has told you in part.—*A Quack damned to everlasting fame*, in the novel of Gil Blas.—What could be the meaning when it was applied to Dr. Rush? What would you think of it, if you were to be called Moses Catillo?—a man who practising merchandize, was arraigned and convicted of a *fraud* in this court. Would you put an with the insult, merely because the person who called you so, should say "I was only discussing a question of commerce

commerce?" If this was to be done in a public paper, would you treat it with silent contempt?

William Cobbett, at the time he made these publications, whatever defence he has now set up to the contrary, did not mean to adopt the subterfuge which is now used. He meant to put it beyond all kind of doubt who he meant; for lest *all these names* should not be perfectly understood; as if some persons would still be at a loss to know who he meant that *disbonored his profession, and was not worthy the public confidence*; he proceeds on to the introduction of Spilisbury's advertisement, which pretends with the same remedy to cure all manner of diseases, however different their nature, calling it first, "a puff equal to Dr. Rush's," and concluding "there, beat that if you can." Thus, you see, this *Quack*, this ridiculous *Empyric* is, forsooth, put upon the same footing with Dr. Rush!—It would insult your understandings to insinuate that this was not to degrade Dr. Rush. Nay, he expressly says in one of his public papers that *he would demolish the fortress of his reputation*.

Now, gentlemen, I ask you whether it is the system or the man attacked? he loads the Dr. with all kinds of epithets which malice and ill nature could possibly invent; holding him up as a vain puffer; when the language of the law is express that "you may not impute to a man vain boasting." A child could not be at a loss to understand the meaning of these attacks.—The idea of attacking the system was an after thought; it originated in the ingenuity of the counsel; because the defendant has never once said that he understood it, or was able to produce an argument against it. It was not the system which he attacked, when he ascribed to Dr. Rush the vain boasting practice of courting and making encomiums upon himself, and raising a reputation which he did not deserve, by writing letters and answering them himself, &c.

What would you think of a man who would interfere in the decision of a cause, in which property to the amount of millions was depending, or in a case of *life and death*, that would tell you at the same time, he neither understood the cause, nor had studied the merits of it, nor the guilt or innocence of the accused, and afterwards say he was only in jest, he was only laughing; would you not declare he was like the man in holy writ, who "threw firebrands, arrows and death, and said, *I am only in sport?*"

Gentlemen, the questions which have been made, and which the learned counsel have exerted themselves so much to overthrow, are answered by Cobbett himself. In the dialogue between him and Dr. Cox, does he speak as though he wished to convince the public; as though he was attacking the system only? No, he does not pretend to have spent a moments reflection either as to the system, or the cause, but that *he knew nothing at all about it*, he was only laughing about it, as his learned counsel say! Here the "cloven foot" plainly appears, he acknowledges that if it had not been Dr. Rush who supported the mode of treatment, he should not have troubled himself about it.

"Out of the abundance of the heart the mouth speaketh." Little thought he that he was furnishing evidence against himself at the trial.

In September, 1797, he sets out stigmatizing him with the epithet of "QUACK." Was not this the way to destroy his reputation, by writing him down, by making the people believe he was a quack? Will gentlemen contend this is not actionable? If he is a quack in the yellow fever, is he not to be presumed a quack in every other disease? If a man undertakes to be a physician when he does not understand the nature or the cure of the disorder, is that man to be trusted?

It has been said that Dr. Rush's person was not attacked because his family was not. Who could be ignorant of the contemptible point of view in which Dr. Rush was held up at this time, and surely his family must be very anxious as to his fate, and the insults he underwent. This, to me, is a good proof that it was the medical skill of Dr. Rush that was attacked, for we find in other parts of the publications that "Rush and the Rushites" are held in a very contemptible point of view, not being able to distinguish between the small pox and the yellow fever, and the declaration is made, that pregnant women were sent by them to the hospital, thus suggesting but in terms which cannot be mistaken, the gross ignorance of this "Master Bleeder," this "Potent Quack."

But say the Plaintiff's Counsel this is not particularly aimed at Dr. Rush; it refers to a whole class. But, Gentlemen, is it the *less* criminal because the insinuations extend to a *whole class*, instead of one individual? It is more a discussion of the system on that account. No, it cannot act as an extenuation, but an aggravation of the slander.—Can you conceive that the introduction of Dr. Tilton, and this letter concerning him was necessary to the mere discussion of the system? 'Tis true that no action has been brought by Dr. Tilton, but Cabbett appears to be following up his abuse upon Dr. Rush by that circumstance, representing Dr. Tilton as a violent party man; mentioning him as ill formed, and that his judgment was wrong in as much as he mistook a bruise on the arm of a woman for the yellow fever. He attacks him as a Rushite and a "Bleeder."—As one of the exterminating Demons. Insinuations, with so much explanation, are fully equal to direct attacks. What means the insinuation "that dead men tell no tales," &c. but that he delighted in destroying his fellow-creatures. That they are insinuations does not deduct from the criminality. It is far worse than open attack, because it adds *meanness* to *malice*.

The words "Empyric" and "Quack," are used through his whole reflections on Dr. Rush. We may therefore, ask what means the word "Quack?"

"A boastful pretender to an art which he does not understand;—a vain boastful pretender to Physic; one who proclaims his own medical abilities in public places. So the learned Addison explains it. Pope calls it "an artful tricking practitioner in physic."—"a mountebank; a bold and ignorant pretender to the art of physic." It is a word of a determined, ascertained meaning, more so than even bankrupt to a merchant.—Thus illiberally has he treated Dr. Rush, but has not explained when bleeding ought, or ought not to be used; what is moderate and what excessive bleeding; nor an idea of the evils of the practice; but with the most inquisitorial meanness, has blackened what he

could not attempt to confute. Can it be pretended that he was not well acquainted with the meaning of the words he used? No, for at another period we perceive him boasting of his classical reading. He has designedly called Dr. Rush a boastful pretender to physic, an art which he did not understand; and this will appear from his false representation of the Doctor's conduct in writing letters, &c. Indeed in one place he says, the "citizens were duped" by that gentleman's conduct. It therefore cannot be doubted that he has been guilty of a libel.

While this profusion of abuse is heaping on an innocent head, his counsel think to lessen his criminality by calling Doctor Rush a man as great as he is good. If they believe so, how inconsistent is their defence of the assassin of that great and good character!

If you wish information whether these words are in themselves actionable or not, the law is very explicit on that head. The very words are selected out in the elementary treatises; they are these: "words are in themselves actionable which injure a man in his trade or profession; such as charge a want of honesty or ability, &c." To call a "physician a quack," is afterwards selected *particularly*. William Cobbett, who is stated by his counsel to be a man of ability and learning, no doubt knew this, and therefore, used the very expressions forbid by the law, to defy the utmost power of the object of his attack. The words go on, "or that he has killed a patient with his physic."—He has selected these two parts which are actionable; he has called him "a quack," and then he has gone on to the comparative and superlative degree—"a potent quack and mountebank," and in order to complete the degradation, he adds that in his mode of treatment he has "killed his thousands and tens of thousands."

But says my learned friend, this does not mean that *he* murdered them, but many died from this mode of treatment, and therefore it is only an attack upon the system. What says my authority? "If a man says a Physician has killed his patients by his physic" *the words are actionable*. Though a man does not charge murder on the Physician, he is not excused, it is enough, if it implies that persons were killed through ignorance; because thereby he is not entitled to the confidence of his fellow citizens. The laws are not to be eluded by artful and ingenious constructions; you are the Judges, and can easily understand the expressions. Malice adopts an equivocal ambiguous stile, but if the "cloven foot" is discovered, if the veil is seen through, if the disguise is discovered, the law strips the sheep's cloathing from the wolf, and exposes him to indignation in his own natural deformity.

But, say gentlemen, whatever might have been said, Dr. Rush has as much business as he can do, and therefore he is not injured.—Does this appear in evidence?—Is it fact?—I am authorised to say that his business has sensibly diminished since the period at which the attack took place. But of this presently.

It is enough for me if I prove that the words are actionable in themselves.



It is said that much dispute and acrimony was used in the controversy among the Physicians, and that it was no wonder if Cobbett forgot decency when Dr. Rush himself treated his opponents with so much acrimony and severity in his animadversions.

I do not see the force of this argument. If Doctor Rush *had* been guilty of even *scandal* in that disquisition, would that justify Cobbett to do so too? If he has been guilty of scandal, let him suffer for it from a due course of law. But has Dr. Rush, from the beginning to the end of what has been read of his discussion of the system, stigmatised any Physician as a Quack? No, but he respectfully calls them his brethren and treats them with tenderness. He was learned on the subject, and was a proper person to lead the public opinion: if therefore he has occasionally forgotten himself in speaking of a contrary system, he may be excused in part.

I say again if no injury, why take these methods if an injury, why not redress by law? My character—my professional and moral character attacked with the venom and art of a demon—my daily bread about to be taken from me—the subsistence for my family in danger of being lost to me—a head covered with grey hairs—fortune gone in paper money—prime of life passed in the revolutionary army—and law allow me no remedy: then the bands of society are rent asunder—I am in a state of nature, let me seek my private revenge, and I am satisfied without the aid of courts—Oh no if these measures are pursued I shall be punished—William Cobbett however ready to violate the law himself we know is in the habit of appealing to law for his protections against force and even against libel.

The counsel for the defendant then softened and we are told that the only consolation left us under all this injury is silent contempt—strange inconsistency—if a man takes my purse, value of one shilling—laws and courts and juries give me remedy—but if he robs me of my good name, which never enriches him, but makes me poor indeed, my only redress it is said is silent contempt.

If the evil extended, only to myself, the remedy the gentleman prescribed, though much worse than bleeding or mercury, might be more palatable; but if I allow myself to be brought into dispute in my profession, to be considered as a Quack, as a pretender to knowledge in Physic which I don't possess, my business will leave me, and my family starve—my wife be reduced to distress—my daughters exposed to seduction, my sons be deprived of education and myself left a miserable object of derision and pity.

It is true, as the learned gentleman observed the same words, if spoken are not actionable which are so when written or printed and published—the poison is in that way infinitely more disseminated—3 Blackstone 126, words spoken to me in the street, may not be actionable, which if reduced to writing, are so, the words in the instance of the young lady, who recovered £4000 sterling damages, would not have been actionable if they had merely been spoken, the publication of actionable words imply malice, unless explained by the defendant.

It is necessary however that we should shew the circumstances of the case, in order to estimate the nature of the offence. These positions

laid

laid down, I shall undertake to shew that the defendant was determined to ruin Dr. Rush as a *Physician*, because he was a "*Republican*."

I think it is perfectly evident that he was not actuated by any motive to discuss any system for the cure of the yellow-fever.—Let us examine the facts. The defendant began his press early in 1796: the sentiments of Dr. Rush and his mode of treatment were perfectly notorious in 1793. I call upon the counsel, even at this late hour, to shew one word about Dr. Rush in that paper previous to the eulogium in December 1796—immediately afterwards the defendant thinks him "too republican," and he says "damn him, I will attack him for it." I argue, the medical system of Dr. Rush being well known in 1793, why did he wait till the spring of 1797 before he threatened, and till the September following before he executed his threat? Not a single word about his republican principles! I know the ingenious turn that was endeavored to be given to these words—that *he would attack the principle*. No, gentlemen, the witness would not give the answer in that way: no, said he, he disapproved of the principle and he would attack him for it.

I trust we are all Republicans—Is there a man who hears me that does not feel and indignation in his breast that an *alien* should abuse him because he is a republican! The citizen of the United States who is not a republican, is a traitor. I am by choice a republican;—I am so by oath: The constitution of the United States is a republican form of government, and a republican form of government is guaranteed to each State.

But says the gentleman, there is a sense in which *republicanism* is assumed, it may mean *democrat* or *sans culotte*: But I ask, do they show any paragraph in his writings or any action of his life in which he does not allow himself a *republican*, not in forced, but in the constitutional sense of the word. When a term is used, of determinate sense in the constitution of any country, I ought to be understood in that sense. And has Dr. Rush from the memorable day on which he voted for, and signed the declaration of our independence, till the present moment ever proved himself to be any other than a *republican* in the constitutional sense? The insinuations of his deviation might have been spared, since they are totally void of foundation. But republicanism is the whole extent of the offence for which he is to be persecuted while living, and his very ashes raked up to obtain a vindictive satisfaction upon his mangled memory after his death! And for all this I will say, Go, and take a boxing match with William Cobbett? No, gentlemen, courts and juries will give a righteous and honorable decision.

I do not wonder at his resentment against Dr. Rush: he is one of those who in the language of the President of the United States, have *done too much, suffered too much, and succeeded too well* in our glorious struggle for liberty, ever to be forgiven. Gentlemen, I conceive an appeal to your feelings to be fair, because by temperate deductions I have established facts:—I see the sun shine, and the showers descend—I afterwards see the grass grow: I thence form a natural conclusion that one is the cause, the other the effect. The ingenious evasion of the gentlemen,

## IMPORTANT TRIAL.

gentlemen, that it was the political opinion he threatened to Dr. Dewees to attack, will not do: no, he must approach under a masked battery: the political sentiment was the real ground of the offence. When the threat was made, the opportunity to execute it was wanting; he therefore suffered the malice to lie in his breast, until one the most fit that could possibly occur made its appearance: one which could not possibly at the time of the threat have entered into the contemplation of the defendant. But the measure was resolved on—the death warrant was prepared—a more fit opportunity could not have been wished for than the fever of 1797 in one respect, nor one less fit in another. We cannot reflect on the situation of our deplorable city at that period, and not be struck with horror at the recollection. We see the patient in extreme distress, stretched on his bed of sickness; physicians themselves at a loss how to relieve that distress. It was at this eventful period. William Cobbett began his malevolent attacks; tending to withdraw the confidence of the unhappy patients from their physician, and thus doubling their affliction.

Farther. This attack was not only threatened, but with violence: he assigns his reason, "Damn him, I will attack him for it."—The reputation of Dr. Rush was intimately connected with his political sentiments, and therefore he attacks the physician.—It is observable, that when he first threatens the attack, so far was he from being actuated by a wish to repel an improper mode of practice in Dr. Rush as a physician, that in that character he speaks of him as liable to no exception: He wishes him to confine himself wholly to his practice as a physician, and not to meddle with politics. But Dr. Rush was his object. "Malice rankles in his heart," and a few expressions which find their way out now and then, prove it to be deep rooted.—He confessed he knew nothing about the practice.

Doctors Smith and Physic, commonly made use of the medicine and practice of Dr. Rush, and to as great a degree, but they had spoken no eulogium; they had made no use of any *republican* expressions, and therefore they escaped without a single remark. Farther than that, Cobbett employed a family physician of the same school: Dr. Dewees, who followed the same mode of treatment, attended on the family. All this proves the meaning of the words used to Dr. Cox: that if it had not been supported by Dr. Rush, he should not have troubled himself about it.

For these reasons, gentlemen, I think I may presume, without the possibility of a doubt, that you will be of the opinion, that the action is well founded: that the words are, in themselves, *actimable*, and that they imply *malice*. But we have not rested on the legal ground, as we might with safety: we have gone farther, we have shown that personal resentment incited to the malicious attack, and that it was the sole and entire motive.

Gentlemen, I do not wish to introduce domestic scenes unnecessarily; but surely when we contemplate injuries and damages sustained, we may, at least, relate what effect it might probably have on the family. Doctor Rush was engaged amidst scenes of danger and death; not only exposed to, but actually attacked by that dreadful disease.

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His family were residing in the country. Instead of receiving letters from him, *his affliction was so severe he could not write*, suppose they receive these papers, in which he is stigmatized a "murderer" and "quack" and though he might survive the contagion, his character should remain aspersed and his memory after his death. So undeserving public confidence.—Would this have no effect on his family?

We have heard much about the liberty of the press. I think I would not yield to any man in sincere estimation of that invaluable right; I consider it the *eye* of our political body, and I would much rather a speck a small blemish should remain, than that by a rash and unskilful operation the noble organ itself should receive an injury. But it is difficult to run the precise line in composing the happy medium which the constitution has formed for the support of every thing which is dear to a citizen. In the constitution formed for Corsica, vide annual register of 1794 p. 90 are these words: "The liberty of the press is decreed, but the abuse of it is left to the law." Private reputation and character is protected by the constitution, the great fundamental law of this state.

Gentlemen, I acknowledge that this case, now about to be decided by you, is one of the most important ever intrusted to a jury of this country. It is true that for a long time past the licentiousness of the press has been extreme: neither the government nor individuals have escaped: no merit of character has screened the individual from attack through that medium. It is therefore that you ought to keep a steady watch over those intrusions upon the good order of society, for it is with you to protect character and government, which if you neglect, like the droppings of rain on a stone, it will wear it imperceptibly away: though the progress be slow, the effect is certain.

Gentlemen, you must take human nature as you find it, and we should not better it had we the power of formation: of the law does not give satisfaction for injuries, it is a sentiment written on the heart of man that *he will obtain it*, and no law will then stop his resentment. Of what avail, it will be argued, was it for me to restrain the impetuosity of my temper and await the course pointed out by the laws of my country: In vain do I respect them unless damages are given sufficient to stop the progress of a gross offence.—You will have no more complaints of this sort, but they will be obtained in another, and most fatal way, if the law is not sufficiently strong to curb it.

In England we find that juries understood this subject perfectly well.—Mr. Tilghman says it was a general warrant which affected the individual liberty which made them so severe in the cases referred to. The judge said it ought to be exemplary in order to protect the magna charta: so we say. So ought you to say in your verdict: it is not the injury sustained by Dr. Rush by the number of patients he has lost. The gentleman read the declaration and made some observations upon the *blanks*. He says no special damages are laid. Are we to run about to enquire who never came to Dr. Rush on this account? If that is required, it may as well be said at once that we shall have no damages, and that men shall publish what they please with impunity!



As I observed before, in England juries understand this matter perfectly well. If a libel involves the public peace and good, specific injuries are not considered. In the case of a young lady whose chastity was attacked, 4000*l.* was awarded.

I hope Dr. Rush will not have to say as a gentleman in Scotland once said, "Oh that I had brought forward this trial in England, for 'there the Jury would take care the verdict should be such as would 'do honor to their impartiality.'" Gentlemen, the precedent cannot fail to have a desirable effect, if you give suitable damages. Instances seldom occur in Pennsylvania of this nature, but in one not long since the Jury proved that they will know the importance of private character: a person was proceeded against *ex parte* by one of the German religious societies, and excluded. The proceeding was entered upon the books of the Society. As it was an attack upon character, the man brought an action, and the Jury gave a verdict for the plaintiff of 500*l.* damages. Case, Stock against the German corporation.

Gentlemen, consider the situation of Dr. Rush at the time of attack;—a Physician of considerable ability in his art—at a period when his whole attention was doubtless engaged for the advantage of a deplorable city: when not an *Herb* nor *Drug* escaped his utmost researches; when not a part of the Human System but he pryed into; all his learning, all his ingenuity on the full stretch. The life of thousands in his hands, an important charge! Surrounded with difficulties, and thus indefatigably engaged he is represented as the most despicable of the human race. I ask you, gentlemen, whether this did not disable him from prosecuting his important pursuits? much of cure in such deplorable situations, depend on the confidence of the patient in his Physician, often more than in medicine: we know how much small shocks affect the mind so weakened by disease.—Who can tell what numbers perished from these publications in this way?

We are told that though Dr. Rush has his merit, he no doubt had his reward. I ask how he could receive his reward? among what class of persons did his practice extend? We well know that the rich had left the city, and therefore the thousands upon whom he attended could not pay him: it would have been to his advantage to have left the city, for a man of his eminence could have commanded business any where, but his point was to discover if possible, an alleviation of the general distress by examining and exploring this new species of disease, which has so often baffled the utmost skill of talents.

As to the merit of the defendant. It is said that he was of great use at a certain time in giving an alarm to the citizens of this country against foreign influence. I will tell you how far he went, and no farther: *He did not wish to destroy, but to change this foreign influence.* He wished to destroy it when it came from one foreign country, and place it on another. But to Americans sensible of the high destinies of their country, what is it from whom the influence comes? it ought to be wholly destroyed, come whence it may from France or from Britain.

I do not know that I need take up your time in referring to the opinion entertained of the plaintiff in other countries: suffice it to say  
that

that almost every Philosophical and medical society in the world have honoured his character. He is an honorary member of almost every society in Europe, or in the world. Dr. Trotter, the celebrated Physician in England speaks of him in terms strongly indicative of the veneration in which he is held abroad.

Although so great is his character and reputation, yet I acknowledge that the case is between A. plaintiff and B. defendant. But although your verdict must be according to evidence and justice, yet you must not be unmindful of character in order duly to estimate the damages. If Dr. Rush had not obtained a well earned reputation, I should not be pressing upon you to bear testimony to that character by exemplary damages, but the malevolent design, the spite and the ill nature is much blackened by the uprightness of character procured and preserved for many year by the plaintiff.

Gentlemen I thank you for your attention—I must in my conclusion beg you to consider the great evils of *slander*. Permit me to attempt its definition. Amongst all the offences that degenerate mankind can commit is one of the greatest : there is nothing that an honest and brave man has so much to fear.

*Man need not dread a worse foe—it stabs with a word—It is the PESTILENCE walking in darkness, spreading CONTAGION far and wide, which the most cautious traveller cannot avoid.—COURAGE cannot defend against its insidious attacks—It is the heart searching DAGGER of the dark AS-*  
*—It is the poisoned ARROW whose wound is incurable.—It is the mortal sting of the deadly ADDER :—nor GOVERNMENT nor OFFICER nor INDIVIDUAL can resist its fatal effects without the aid of LAW.—MURDER is its employment ; INNOCENCE and MERIT its prey, and RUIN its SPORT.*

# TRIAL

OF

*WILLIAM BUSHNELL, M.D.,      MILTON FULLER, M.D.,  
SAMUEL GREGG, M.D.,      H. L. H. HOFFENDAHL, M.D.,  
GEORGE RUSSELL, M.D.,      I. T. TALBOT, M.D.,  
DAVID THAYER, M.D., and      BENJ. H. WEST, M.D.,*

ALL OF BOSTON,

## FOR PRACTISING HOMŒOPATHY,

WHILE THEY WERE MEMBERS OF THE

MASSACHUSETTS MEDICAL SOCIETY,

BEFORE

JEREMIAH SPOFFORD, M.D. . . . . OF GROVELAND.  
AUGUSTUS TORREY, M.D. . . . . OF BEVERLY.  
GEORGE HAYWARD, M.D. . . . . OF BOSTON.  
FREDERIC WINSOR, M.D. . . . . OF WINCHESTER.  
FRANCIS C. GREENE, M.D. . . . . OF EASTHAMPTON.

ON THE COMPLAINT OF

LUTHER PARKS, M.D. . . . . OF BOSTON.  
R. L. HODGDON, M.D. . . . . OF ARLINGTON.  
THOMAS L. GAGE, M.D. . . . . OF WORCESTER.  
ASA MILLET, M.D. . . . . OF BRIDGEWATER.  
BENJAMIN B. BREED, M.D. . . . . OF LYNN.

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The Examination and Consideration of the Fellows of the Massachusetts Medical Society.

BOSTON, MAY, 1873.





## STATEMENT OF THE TRIAL.

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IN November, 1871, the following notice was received by each of the following gentlemen, viz :—

William Bushnell, M.D.	George Russell, M.D.
Milton Fuller, M.D.	I. T. Talbot, M.D.
Samuel Gregg, M.D.	David Thayer, M.D.
H. L. H. Hoffendahl, M.D.	Benj. H. West, M.D.

All of Boston.

NORTHAMPTON, MASS., NOV. 4, 1871.

To ——— M.D.

SIR, — Charges having been preferred against you by a Committee of the Massachusetts Medical Society of "Conduct unbecoming and unworthy an honorable physician and member of this Society," *to wit*: "by practising or professing to practise according to an exclusive theory or dogma, and by belonging to a Society whose purpose is at variance with the principles of, and tends to disorganize, the Massachusetts Medical Society."

You are hereby directed to appear before a Board of Trial at the Society's Rooms, No. 36 Temple Place, *Perkins Building*, on Tuesday, November 21, 1871, at 11 o'clock, A. M., to answer to the same, in accordance with by-laws and instructions of the Society.

SAMUEL A. FISK,

*President of the Massachusetts Medical Society.*

At the time and place appointed the persons notified appeared before a board consisting of

Jeremiah Spofford, M.D., of Groveland.  
Augustus Torrey, M.D., of Beverly.  
George Hayward, M.D., of Boston.  
Frederic Winsor, M.D., of Winchester.  
Francis C. Greene, M.D., of Easthampton.

The charges were then presented, signed by

Luther Parks, M.D., of Boston,  
R. L. Hodgdon, M.D., of Arlington.  
Thos. L. Gage, M.D., of Worcester.  
Asa Millet, M.D., of Bridgewater.  
Benjamin B. Breed, M.D., of Lynn.

The accused protested against being tried upon charges of so vague a character; against the manner in which the so-called board of trial was constituted; and also against the manner in which the trial had thus far been conducted.

The board refused to receive or consider these protests, when the trial was interrupted by a temporary injunction from the Supreme Court.

Arguments on the question of an injunction were made by counsel before the Supreme Court, and the injunction was removed, the Court declining, at this stage of proceedings, to decide upon the powers of the Society under its charter.

In April, 1873, the following notice was received by all the persons accused, except SAMUEL GREGG, M. D., removed by death.

BOSTON, April 1, 1873.

To ——— M. D.

*Sir:*— Specifications having been demanded of charges preferred against you by a Committee of the Massachusetts Medical Society of "Conduct unbecoming and unworthy an honorable physician and member of this Society," *to wit:* "by practising or professing to practise according to an exclusive theory or dogma, and by belonging to a Society whose purpose is at variance with the principles of, and tends to disorganize, the Massachusetts Medical Society," and you having been directed to appear before a Board of Trial at the the Society's rooms, No. 36 Temple place, *Perkins Building*, on Tuesday, November 21, 1871, at 11 o'clock, A. M., to answer to the same. In accordance with By-laws and instructions of the Society.

By Dr. FISK,

*Then President of the Massachusetts Medical Society.*

The Committee now specify that the exclusive theory or dogma referred to in said charges is the theory or dogma known as Homeopathy, and the Society therein referred to, whose purpose is at variance with, and tends to disorganize the Massachusetts Medical Society, is the Massachusetts Homeopathic Medical Society.

The Committee file the following as further specifications:

CHARGE I.— That you are guilty of an attempt to disorganize and destroy the Massachusetts Medical Society.

SPECIFICATION 1.— That you have joined, and are a member, of a certain Society, known as the Massachusetts Homeopathic Medical Society, whose purposes are at variance with, and which tends to disorganize, the Massachusetts Medical Society.

SPECIFICATION 2.— That you belong to, and are a member of, a certain Society called the Massachusetts Homeopathic Medical Society, which adopts as its principle in the treatment of disease a certain exclusive theory or dogma, known as Homeopathy.

CHARGE II.— That you are guilty of conduct unbecoming and unworthy an honorable physician and member of the Massachusetts Medical Society.

SPECIFICATION 1.— In that you practise, or profess to practise, medicine according to a certain exclusive theory or dogma known as Homeopathy.

SPECIFICATION 2.— In that while a member of the Massachusetts Medical Society you have joined, and are a member of, a certain Society called the Massachusetts Homeopathic Medical Society, which adopts as its principle in the treatment of disease a certain exclusive theory or dogma known as Homeopathy, and whose purposes are at variance with, and which tends to disorganize, the Massachusetts Medical Society.

SPECIFICATION 3.— In that you are a member of a certain Society, called the Massachusetts Homeopathic Medical Society, which adopts as its principle in the treatment of disease a certain exclusive theory or dogma, known as Homeopathy, whose purposes are at variance with, and which tends to disorganize, the Massachusetts Medical Society.

You are further hereby reminded that to try the same, the Board of Trial stands adjourned to April 29th, 1873, at 11 A. M., at 36 Temple Place.

GEO. C. SHATTUCK,

*President of the Massachusetts Medical Society.*

At the time and place of adjournment the accused appeared. R. L. Hodgdon, M.D., of Arlington, was the only one of the prosecutors present. He presented the charges as amended and added to; and as documentary proof he exhibited the Act of Incorporation of the Massachusetts Homœopathic Medical Society and the section of its by-laws which state that "Any person who . . . acknowledges the truth of the maxim *similia similibus curantur* may become eligible to membership" of the Society.

He read extracts from the Organon, in which Hahnemann states that Homœopathy is the opposite of, and can have nothing to do with Allopathy.

He presented the section of a By-law of the Massachusetts Medical Society, passed in 1860, as follows:—

"No person shall hereafter be admitted a member of the Society who professes to cure diseases by Spiritualism, Homœopathy, or Thompsonianism."

Also a resolution adopted by the Massachusetts Medical Society in 1871 to the effect, that the practice of Homœopathy is "conduct unbecoming and unworthy an honorable physician and member of this Society."

Also, the fact that the accused were known as practitioners of homœopathy and members of the Massachusetts Homœopathic Medical Society.

Dr. I. T. Talbot appeared as counsel for Dr. William Bushnell, in behalf of whom and for the rest of the accused, he made the following demands of the Board of Trial:—

1. That the trial should not be held with closed doors, but that their friends should be allowed to be present.

Demand refused.

2. That reporters for the press should be allowed to be present; that as this was a matter affecting the character of the accused, the public had a right to know the evidence produced and the manner of conducting this trial.

Demand refused.

3. That the accused be allowed legal counsel, since it is proposed to dispossess them of rights, privileges and personal property.

Demand refused.

4. That they be allowed to have an advocate, not a member of the Massachusetts Medical Society, present to advise them.

Demand refused.

5. That, as they have reason to object to the record of the Secretary, a phonographic reporter of the trial should be appointed by mutual consent, and sworn to the faithful performance of his duty.

Demand refused.

6. That the accused may employ a phonographic reporter.

Demand refused.

7. That an amanuensis, not a member of the Massachusetts Medical Society, be allowed to sit beside the accused and assist him in taking notes of the trial.

Demand refused.

8. The right to peremptory challenge.

Demand refused.

9. The right to challenge members of the Board of Trial for good and sufficient reasons.

Demand refused.

The accused then presented the following protest and asked the board to receive it and put it on file.

### PROTEST OF WILLIAM BUSHNELL, M.D.

The undersigned having been summoned to appear before a board of trial, said to have been appointed by the Massachusetts Medical Society, to answer to charges said to have been preferred against him by a committee of said Society, at a place named in Boston, on the 21st November, 1871,

And having been further summoned to appear before the same board at the same place, on this day, at what is called *an adjourned meeting* of said board,

Presents the following Protest against any further proceedings by the said body, assuming to be a board of trial: —

1. That this is not a lawful meeting, by adjournment, of said alleged board.

2. That the persons professing to act as a board of trial are not legally constituted as a board of trial, for the reason, among others, that it is not elected, directly or indirectly, by the Massachusetts Medical Society.

3. That, if the board be legally constituted, it has no power to suspend, expel, or disfranchise any Fellow of the Society.

4. If the board be legally constituted, and have power to try the undersigned on charges duly preferred, it has no authority to try the undersigned upon the two charges and the five specifications under the same, to which the undersigned has been summoned to answer at this time, because some of the same have been newly made, and others have been altered in material parts, and are not the charges and specifications for the trial, of which this board of trial was organized.

5. That the undersigned, if put to trial, is by law entitled to a right of challenge for cause as to members of the board, and to some right in the selection of said members, and that any by-laws or rules annulling or abridging said right are void; and has a right to the assistance of legal counsel, and to the aid of an advocate who may not be a member of the Society, and that any by-law or rule disregarding or abridging said right is void.



6. That the charges have not been made to the President of the Society in writing and signed by three members, as required by the by-laws.

7. That this board has been continued in office beyond the year for which its members were elected commissioners on trials.

8. That this board has not been organized by the President of the Society, under the By-law xxxi, section 1, to try the undersigned upon the two charges, if the said two charges have been duly made to him by three Fellows.

(Signed) WILLIAM BUSHNELL.

The other members accused filed a similar protest, with the exception of Dr. Benjamin H. West, who presented the following protest.

#### PROTEST OF BENJ. H. WEST, M.D.

I, the undersigned, Fellow of the Massachusetts Medical Society, who have been cited to appear before a board of trial, according to the foregoing notice, appear at the time and place named therein, and respectfully protest against any proceedings being taken against me,

Because the Massachusetts Medical Society has no power or right to try and expel or otherwise punish any of its members for any of the causes set forth in said notice;

Because the power to suspend, expel, or disfranchise any Fellow of the Society is vested in the whole body of the Fellows of the Society, and they have no right to delegate that power to any board of trial or select body of the members;

Because this board of trial is not legally constituted, and has no right or power to try me upon any charges whatsoever;

Because the by-law or resolution on which this accusation is founded, is an *ex post facto* law, and therefore inoperative.

BENJ. H. WEST.

Boston. April 29, 1873.

#### ANSWER OF WILLIAM BUSHNELL, M.D.,

##### TO THE CHARGES AND SPECIFICATIONS.

THE undersigned, not waiving the protest which he has offered, but still insisting upon every part thereof, and denying the right of this alleged board of trial to hold him to trial on the present charges and specifications or any other, —

As to Charge I, says that he is not guilty of the same.

As to Specification 1, he says that he is a member of the Massachusetts Homœopathic Medical Society. He denies that the said Society tends to disorganize the Massachusetts Medical Society as by law constituted and legally administered. He denies that the

purposes of the said Homœopathic Society are at variance with the legal purposes of the Massachusetts Medical Society. He denies that this Specification, if proved, establishes the charge.

As to Specification 2, he denies that the Massachusetts Homœopathic Medical Society adopts as its principle in the treatment of disease any exclusive theory or dogma. He denies that this Specification, if proved, establishes the Charge.

As to Charge I, and both the Specifications under this same, he further says that the legal purpose of the Massachusetts Medical Society is the promotion of the art of healing generally and the preservation of health, including the study of anatomy, physiology, hygiene, dietetics, drugs, chemistry, and all scientific investigations of nature and the human body, bearing upon the preservation and restoration of health. That it is not in the power of persons constituting the Society for the time being, or for any to whom they may attempt to delegate their powers, to limit the purposes of that Society, and to dismiss or suspend members for the honest holding of opinions, or the honest practice of medicine, because such opinions or practice may not be in accordance with the opinions or practice of those, or of the majority of those, who attempt to expel them. That homœopathy is within the science and art of restoring and preserving health, and is recognized by law in Massachusetts as the lawful practice of medicine, and desirable and useful to the community. That the said Homœopathic Medical Society is not bound to, and does not bind its members to, any exclusive theory or dogma in the treatment of disease, in any such manner as to cause it to tend to disorganize or to be at variance with the lawful purposes of the Massachusetts Medical Society, although the nature and purposes of said Homœopathic Society may not conform to the present opinions of certain members of the Massachusetts Medical Society; and whether such opinions may, at any given time, be the opinions of a majority of the Massachusetts Medical Society, the undersigned has no means of knowing, but he says that as a member of the Massachusetts Medical Society he is bound only by the purposes and objects set forth in the charter, and not by those of a majority of its members at any given time.

The undersigned further says that the first Article of the By-laws of the said Homœopathic Society is as follows: "This Society demands for itself absolute liberty in science, and hence requires of its applicants for membership no creed or confession of medical belief, but only the expression of a willingness to act for the furtherance of its declared objects." And the second Article declares the objects of the Society as follows: "The development of the materia medica by proving drugs upon the systems of men and animals; the improvement of methods of administering medicines thus proved to the sick, in accordance with the formula '*similia similibus curantur*'; the encouragement of special studies and re-

ports calculated to improve its members in the collateral branches of medicine." By the 17th Article it is set forth that any person who has received the title of Doctor of Medicine from any legally authorized medical institution, and who sustains a good moral character, is eligible to membership, after being examined and approved by the Board of Censors. The undersigned further says that said Homœopathic Society has for its object the unlimited investigation of the science and art of healing, giving only special attention to what is known as homœopathy, and has no special theory or dogma as to surgery, obstetrics, anatomy, physiology, hygiene, or dietetics, and does not, in special cases at the discretion of the physician, preclude resort to any of the methods now in use among the more intelligent physicians who do not use homœopathy, such as enemata, emetics, cathartics, or other resources, either mechanical or in the nature of mechanical expedients, or chemical antidotes, as in cases of poison. The members of the Homœopathic Society claim a right and are allowed to use any means within the scope of the materia medica, and in the whole range of medical science, for the cure or relief of disease.

As to Charge II, the undersigned says that he is not guilty of the same. He further earnestly protests that the three specifications under said Charge, fairly and reasonably considered, do not warrant the charge of conduct unbecoming an honorable physician. That if the board of trial should believe the Specifications to be proved, it ought not to find the undersigned guilty of dishonorable conduct; that such an act of the board would be an attempt to injure the moral reputation of the undersigned in the community, on specifications which are consistent with the honest holding of opinions and honorable professional practice in accordance therewith, and with membership of both Societies, without any intent on his part which can be called dishonorable as to either Society. In short, that such an act on the part of the board of trial would itself come within the terms of the second charge.

As to Specification 1, he says that he does not practise or profess to practise medicine according to any exclusive theory or dogma, and, in explanation, refers to what he has above said respecting the purposes and objects of the said Homœopathic Society. That he has faith in the general principle known as homœopathy, and practises in accordance therewith, but is not precluded from resorting at his discretion to other methods of treatment (instances of which he has given above) for special purposes and in special cases, and is bound at any time to qualify or entirely change his opinions and practice upon any new light being thrown by science on the subject of medicine. He denies that the Specification, if proved, establishes the Charge.

As to the Specifications 2 and 3, he refers to what he has said under Charge I, and under Specification 1 of Charge II. As to both the Charges and all the Specifications under the same, he says that

he cannot lawfully or justly be deprived of his property and franchise and valuable interests in the Massachusetts Medical Society, or suspended from the use of the same, or in any way be punished by said Society, on the ground that he is a member of the Massachusetts Homœopathic Medical Society, and has faith in the general principles known as homœopathy, and conforms his general practice honestly and honorably thereto, while at the same time he is not precluded from the use of any or all methods at his discretion now practised by intelligent physicians who have not faith in homœopathy (instances of which he has above stated), and has no theories or practice respecting surgery, obstetrics, anatomy, physiology, hygiene, or dietetics not open to and common among physicians of all schools; and he is engaged in scientific study of the whole subject of health and disease, and is under no obligations, individual or associate, interfering with his duty to accept any results of science, or with the promotion of the purposes of the Massachusetts Medical Society, as defined by law. And while the said Society have recognized him as duly educated and properly qualified for the duties of his profession, and make no charges of want of knowledge or of intelligence, or of any false pretences or deception, or of any immorality, or of any conduct actually dishonorable, that to punish him in any manner, under these circumstances, on a charge of dishonorable conduct, would be a false pretence before the community, and a perversion of the purposes, privileges, and powers of the Massachusetts Medical Society, in order to injure such members of the same as honestly hold opinions as to medicine, recognized by law as legitimate, but differing from those of the persons who have or suppose themselves to have at the present time the power to control the said Society.

(Signed) WM. BUSHNELL.

The other members accused filed an answer similar to the above with the exception of Dr. West, who presented the following.

#### ANSWER OF BENJ. H. WEST, M. D.,

##### TO THE CHARGES AND SPECIFICATIONS.

The undersigned denies that the practising or professing to practise according to the system of homœopathy, or belonging to the Massachusetts Homœopathic Medical Society, is conduct unbecoming and unworthy an honorable physician and member of the Massachusetts Medical Society, and denies that the purpose of the Massachusetts Homœopathic Medical Society is at variance with the principles of, or tends to disorganize the Massachusetts Medical Society.

BENJ. H. WEST.

Boston, April 29, 1873.



## EVIDENCE FOR THE DEFENCE.

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The following documentary evidence was introduced in the case of Dr. Bushnell, and was accepted by the board of trial as applying to all the cases: —

1. The Act of Incorporation of the Massachusetts Homœopathic Medical Society, showing that membership of the said Society was authorized by law.

2. That section of the By-laws of said society relating to membership, as originally adopted.

3. That portion of the present By-laws of said Society relating to the objects of the Society and to membership.

4. The Act of Incorporation of the Massachusetts Homœopathic Hospital.

5. The Act of Incorporation of the Homœopathic Medical Dispensary.

6. The Act of Incorporation of the New England Homœopathic Medical College.

7. Correspondence with the Treasurer of the Massachusetts Medical Society, showing that the accused had faithfully paid their dues to the Society.

The following is a resumé of testimony introduced. It was proposed by the accused to give it under oath, but the chairman ruled that the word of any respectable physician would be accepted by the board.

### EVIDENCE OF WILLIAM BUSHNELL, M.D.

I joined the Massachusetts Medical Society in 1856, and joined the Massachusetts Homœopathic Medical Society two years later; I considered the object of the Homœopathic Society to be to improve that branch of the healing art in which drugs are applied to remove the symptoms of disease; while I believe homœopathic medicines to be the best for this purpose, I have never signed any pledge to practise only in accordance with this theory, and if any better system can be shown I shall be happy to learn it; have never known any effort on the part of homœopathic doctors or members to disorganize or destroy, or in any way disturb, the Massachusetts Medical Society.

**THE CHAIRMAN.** Have you ever been hindered from investigating any branch of the science of medicine by the Massachusetts Medical Society?

**DR. BUSHNELL.** If this trial is not to hinder such investigation, I am at loss to understand what it is for.

DR. HODGDON. When you joined the society were you not asked by the censors if you practised homœopathy ?

DR. BUSHELL. I was asked what my opinion of the system of homœopathy was, and answered that I was not aware that there was such a "system." I began to investigate homœopathy about one year after joining this society.

THE CHAIRMAN. Do you think a physician should confine himself to the practice of homœopathy in all cases ?

DR. BUSHELL. There is much in a physician's practice to which homœopathy cannot apply. If, in an obstetric case, it becomes necessary to use the forceps, the instrument should be applied "heroically." This and surgery are not properly the practice of medicine, though medicine might be required as accessory in the treatment.

I have never, in any way to my knowledge, sought to destroy or disorganize the Massachusetts Medical Society.

#### EVIDENCE OF MILTON FULLER, M. D.

I have practised medicine about fifty years ; I joined the Massachusetts Medical Society in 1842, and paid dues regularly till 1862, when I was placed on the retired list. I was one of the original incorporators of the Massachusetts Homœopathic Medical Society ; its object was to examine the action of medicines in accordance with the homœopathic law, and to develop, as far as possible, this system of medicine ; it was in no way designed, nor has it ever acted in opposition to the Massachusetts Medical Society ; it has in no way sought to destroy or disorganize that Society ; it has no By-law or pledge by which its members are restricted to any exclusive theory or dogma in their practice ; every member is left perfectly free to give such medicine and use such treatment as he thinks best for his patient ; I am convinced of the curative effect of minute, homœopathic doses in severe diseases, and, if not allowed to use them in such cases, would at once retire from practice.

THE CHAIRMAN. Have you ever been prevented by the Massachusetts Medical Society from making any investigations you might choose ?

DR. FULLER. No ; but this prosecution arises on account of such investigations, and of my belief in and practice of homœopathy.

DR. TALBOT. Have you ever known any investigation of homœopathy to be made by the Massachusetts Medical Society ?

DR. FULLER. I never have.

DR. TALBOT. Do you know of any By-law of the Massachusetts Medical Society to prevent your making investigations in homœopathy, or of joining any society which makes such investigations ?

DR. FULLER. I do not. I never heard of any such By-law, and think that any such By-law would be inconsistent with the Charter of this Society.

## EVIDENCE OF H. L. H. HOFFENDAHL, M.D.

I received my medical diploma from Harvard University in 1852. Then went to Europe and spent two years in continuing my medical studies. In 1854, immediately upon my return from Europe, I joined the Massachusetts Medical Society, and was admitted without any questions being asked as to how I intended to practise. From that time until now, I have been uninterruptedly engaged in the practice of medicine in Boston.

My method of practice has been simply to use any method of treatment that I consider necessary for the benefit of my patients. I have used so-called homœopathic remedies, and so-called allopathic remedies, cold-water treatment, electricity, hygienic measures, etc., without admitting that any individual or any society had the right to dictate to me what treatment I must adopt.

After practising in this manner for a number of years, it was suggested to me by members of the Massachusetts Homœopathic Medical Society that, as I was in the habit of using homœopathic treatment, it was proper that I should join the homœopathic society, in order to define my position, and that I might not be accused of double-dealing or dishonesty.

It was well known that physicians, members of the Massachusetts Medical Society, but not professedly homœopaths, and not members of the Homœopathic Society, were in the habit of using homœopathic remedies clandestinely; that is: in the sick room, with doors closed, they would confidentially inform their patients that they were competent to practise homœopathy, and would administer homœopathic remedies, — while before the world they would deny any belief in that system.

Now, such a course, it appears, is allowed to members of the Massachusetts Medical Society, but it is *not* considered by me to be either honest or honorable.

My course, therefore, seemed clear. I joined the Homœopathic Society in 1857, in order to put on record the fact that I did, when I chose, use so-called homœopathic treatment openly, and denied the power or right of any man or body of men to refuse me that privilege.

Since joining the Homœopathic Society, I have not altered my method of practice in the least; using homœopathic treatment when I thought proper, and continuing to use any other remedy or method of treatment that I considered as likely to be of benefit to my patients.

And I can truly testify that in pursuing this course I have not been hindered or annoyed or threatened with expulsion by the Massachusetts Homœopathic Medical Society. I can testify that there has been nothing exclusive or illiberal in the action of that Society; that I have been allowed that perfect freedom of thought

and action, which every medical man, who believes that medicine is a free science, demands as his right and prerogative.

DR. HODGDON. Have you been hindered in making any communication to the Massachusetts Medical Society, on the subject of homœopathy?

DR. HOFFENDAHL. Not hindered and not encouraged. It is well known that communications at the meetings of the Society are not allowed, except by preliminary arrangement, and such has never been offered to me.

DR. TALBOT. Have you ever been invited to make any report concerning homœopathy, before the Society?

DR. HOFFENDAHL. Never.

### EVIDENCE OF GEORGE RUSSELL, M.D.

I am seventy-seven years old; have been in practice fifty-three years; began to investigate homœopathy in 1846 or 1847, and have since continued such studies; I believe it is the best system of medicine, but should be very glad to find any better; have never sought to injure, destroy, or disorganize the Massachusetts Medical Society, but have sought to learn from it as much as possible. Think that if homœopathy were investigated by the Society it would greatly benefit its members.

THE CHAIRMAN. Why, if you believe in homœopathy, do you remain in the Massachusetts Medical Society?

DR. RUSSELL. Because I see no good reason why I should leave it. It is a society designed to include all educated physicians of good character, and has nothing to do with medical opinions or belief.

DR. HODGDON. What is allopathy?

DR. RUSSELL. I suppose, from the derivation of the word, it means the opposite of homœopathy.

DR. HODGDON. Do you consider the Massachusetts Medical Society an allopathic society?

DR. RUSSELL. I do not, though some of its members may be allopaths. If the Society were such, I should leave it at once.

### EVIDENCE OF DAVID THAYER, M.D.

I have been practising medicine for thirty years; I joined the Massachusetts Medical Society in the year 1845, and was one of the original corporators of the Massachusetts Homœopathic Medical Society, in 1856; its object is the improvement of the science of medicine in accordance with the principle *similia similibus curantur*; homœopathy is not yet perfect, and the object of the Society is to improve it; I have never known of an effort being made on the part of the members of the Massachusetts Homœopathic Medical Society to destroy or injure the Massachusetts Medical Society.



There is not, and never has been, required from the members of the Homœopathic Medical Society a pledge to practise in accordance with any particular theory.

THE CHAIRMAN. Do you consider it honorable, as a member of the Massachusetts Medical Society, to practise homœopathy?

DR. THAYER. Perfectly so. The Society is chartered by law for physicians of every school. Education and character are, by that charter, the only requisites for membership. Medical opinions legally form no part of the qualifications of members.

DR. TALBOT. Do you consider it honorable, as a member of the Massachusetts Medical Society, to give unmedicated sugar pellets, and pretend that they are homœopathic medicine?

DR. THAYER. I should consider it very dishonorable and downright dishonesty.

DR. TALBOT. If it were known that a physician was in the habit of practising such deception, should you think him sufficiently honorable to be worthy of a place on any board of trial?

DR. THAYER. No; I should think he deserved expulsion from any honorable society.

DR. TALBOT. Will you state the history of the Massachusetts Homœopathic Medical Society?

DR. THAYER. It was first established in 1840 by four or five physicians, and was called the Homœopathic Fraternity. Its meetings were informal and social in character, and were held at the houses of the members. As the numbers increased, the name was changed to The Massachusetts Homœopathic Medical Society, about 1850, and in 1856 it was chartered by the State without any change in the objects of the Society, which were to develop a branch of medicine not cultivated by the Massachusetts Medical Society. At present there are between one and two hundred members of the Homœopathic Society.

THE CHAIRMAN. Have you ever been prevented by the Massachusetts Medical Society from making any investigations in regard to homœopathy?

DR. THAYER. No, I never have; and from many of the members who knew that I believed in, and practised, homœopathy, I have received only the greatest courtesy and kindness; but there are members of this Society, who, at its meetings, and at other times and places, have gone out of their way to insult those members who believe in homœopathy; and I consider that this prosecution is designed to prevent the investigation of homœopathy by members of this Society.

#### EVIDENCE OF I. T. TALBOT, M.D.

At the time I joined the Massachusetts Medical Society in 1854 I was a member, and was known to be the secretary, of the Homœopathic Society; the president, Dr. George Hayward, senior, when

he signed my diploma, jocosely remarked that he did not know but we should have a majority of homœopaths in the Society soon; I have continued a member in this Society till the present time, regularly paying my dues, and have never sought to introduce any disturbing topics into the Society.

For twenty years I have been familiar with the action of the Homœopathic Society, and have never known it, or any of its members, to seek to destroy, or disorganize, or in any manner injure the Massachusetts Medical Society. There is no oath or pledge binding its members to any particular theory in practice; nor is there, in my opinion, anything in the membership of the Homœopathic Society in the least inconsistent with the membership of the Massachusetts Medical Society. It is a special society, like the Gynecological or Ophthalmological Societies. It cultivates a single idea or branch of medicine which the general society has neglected.

THE CHAIRMAN. When you joined the Homœopathic Society, why did n't you leave this?

DR. TALBOT. For the reason that I did not cease to be a physician; and this Society was chartered for the purpose, and with the design, to include every educated physician in the State.

THE CHAIRMAN. Have you ever been prevented from presenting your homœopathic views in the Society?

DR. TALBOT. I have never been prevented, but I knew that the mere mention of homœopathy was offensive to certain members, and I did not wish to do anything to disturb in the least the harmony of the Society. Perhaps it would have been better to have presented our views and had them discussed within the Society, but it was from no wish to destroy or disorganize the Society that this was not done.

#### EVIDENCE OF C. W. SWAN, M.D.

In answer to questions by Dr. Talbot.

I am Secretary of the Massachusetts Medical Society, and have been for several years. The society has about 1,200 members. Think it is as prosperous now as ever before. Have never known the accused to do anything to injure or destroy the society. So far as I know they have been peaceable members of the society.

R. L. HODGDON, M. D., the prosecutor, refused to testify.

The accused offered to present the testimony of every member of the Massachusetts Homœopathic Medical Society, if it were necessary to prove that the object and character of that Society was such as had been already stated by witnesses.

THE CHAIRMAN. Cumulative evidence on these points will not be necessary, and will not add to the strength of testimony.

The accused proposed at this point to present no further evidence.

## ARGUMENTS FOR THE ACCUSED.

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DR I. T. TALBOT then read the following argument in defence of Dr. Bushnell, which was also accepted as the argument for Dr. Hoffendahl, Dr. Russell, and himself.

*Gentlemen of the Board of Trial:* — Rarely, perhaps never, in the history of medical jurisprudence, has there been such a spectacle as is presented here today. Rarely, in any times, certainly never in modern times, has there been anything like it in civil or criminal jurisprudence. We are summoned here, at the peril of loss of valuable interests, and of injury to our good names, to answer to charges of a most serious description, before a tribunal selected by our opponents, sitting with closed doors, all legal counsel prohibited us, all means excluded of securing a satisfactory report of what takes place here, the most usual and necessary aids of assistants or amanuenses prohibited; and, when we offer to prove facts which would exclude one of your number from sitting in trial upon us on every principle of justice, the Board has no ear for our complaint.

We protest against this tribunal as not constituted in accordance with the By-laws of our Society, for the reasons already presented to you. We protest against it further, as constituted in a manner unfair and unjust, and we believe unknown to modern practice, whether in courts or in societies, where valuable interests and reputations are concerned. The question being the character of homœopathy, and the rights of those who practise it, the court is selected by an opponent of homœopathy, and composed entirely of its opponents.

In proceedings analogous to these, where a special court is selected, it is customary to send to the accused a list of names from which they may strike off a certain number, the remainder constituting the court, or to provide some method of reciprocal exclusion and selection. These safeguards against injustice having been disregarded, there is the more reason why a challenge for cause should be allowed. We never heard of a court, however constituted, and for whatever purpose constituted, that refused to entertain a challenge for cause against one of its members.

It is not that you decide our grounds of challenge to be insufficient, but you have refused even to hear them, whatever they may be. That you should limit the length of our argument, we admit was a matter of discretion, but we regret that you thought your discretion required you to allow six of us, separately tried, an average of half an hour apiece. This has compelled us to some extent to

unite in our argument, while in common justice each of us should have had the right to present his views in the manner most satisfactory to himself.

But a far greater injustice has been attempted, — an assault upon our reputations, dearer to us than aught this Society can give us. The real charge against us is that we are members of a society, established and encouraged by law, and that we practise medicine after a method recognized by the supreme law of Massachusetts as not only legitimate, but as useful and deserving of the highest encouragement. The real charge is that we are homœopaths. That is its beginning, middle, and end. Yet the charges are couched in the form which you would apply in the case of a disreputable criminal or outlaw. Each of us is charged with “conduct unbecoming and unworthy an honorable physician.”

The specification is that we are homœopaths. Massachusetts has said in the highest form in which she can utter her voice, that homœopathy is worthy of an honorable physician, and entitles its practitioners to receive the “same degree” of “doctor in medicine,” as conferred by Harvard University and the Berkshire Medical Institution. Massachusetts has, by its statutes, held out to public confidence and support homœopathic hospitals, dispensaries, and medical colleges, and has consented to put the broad seal of its approval upon the degrees of “doctors in medicine” given by the Homœopathic College. Yet we stand before you to meet the charge, that the holding of such degrees and belonging to such institutions and practising medicine by those methods is dishonorable.

Gentlemen, our prosecutors know that there is no connection between the charge they have made upon us and the facts they have specified. If our accusers think that this Society has a right to expel members otherwise qualified, solely because they are homœopaths, let them say so like honorable men. That will raise a fair question of authority and policy. But we resent, and a just community will denounce, an attempt to send us away branded as dishonorable men, when the objection is only that we practise medicine in a manner allowed and encouraged by law, but which is not in accordance with the opinions of our accusers. It is the accusation that is dishonorable, and not the act imputed to us. We appeal with confidence to you who assume to be our judges, that if you decide against homœopathy and homœopaths, you will say so and no more. If you think membership of the Homœopathic Society and the practice of homœopathy are inconsistent with membership of this Society, we trust you will say so in plain terms, and that you will not, by calling difference of opinion, however great, dishonorable, lend yourselves as instruments of calumny and injustice. That a virulent party spirit, which identifies difference of opinion in practice with dishonor, should raise up within a large profession accusers enough barely to comply with the requirements of the by-



laws, is not a matter of surprise ; but it would be a cause of surprise and deep regret, if that spirit should enter into and possess the court itself.

We are conscious of the great disadvantages under which we speak. We are aware that, in presenting this protest against these proceedings, and in speaking as plainly as we have felt it our duty to speak, we incur the risk of increasing any prejudice you may have against our cause. It remains for us to bespeak for the special points we present to you the most patient and impartial consideration you can give them ; and this not for our sakes mainly, but for your own, and for the good name of this Society, of which we are all alike members.

#### THE POWERS AND OBJECTS OF THE MASSACHUSETTS MEDICAL SOCIETY.

This Society is not a private association ; membership of which may depend on the will of the majority. It is a public institution, established by the people, for the good of all the people ; and membership of it is a property and franchise, recognized by law, and of which we cannot be deprived, except for reasons permitted by the law. The majority of the Society can no more deprive us of this right and property by an exercise of its will than it can of any other right or property. Chief-Justice Shaw says of this Society, in his opinion in *Barrows v. Bell*, 7 Gray, 314 : "The Massachusetts Medical Society were not a private association. They were a public corporation, chartered by one of the earliest acts under the constitution. . . . The charter invested the Society, their members and licentiates, with large powers and privileges in regulating important public interests of the practice of medicine and surgery. . . . This Society was regarded by these legislative acts as a public institution, by the action of which the public would be deeply affected in one of its important public interests, the health of the people. . . . The *status* or condition of being a member of this Society was one of a permanent character and recognized by law."

The Society has a library, a museum, and funds in which we have a vested estate, and to which we have contributed annually. It is a public institution, of which there is a right of membership given by law to all persons practising medicine within the Commonwealth, having certain qualifications prescribed by law.

The preamble to the charter (Act Nov. 1, 1781) is as follows : "As health is essentially necessary to the happiness of society, and as its preservation or recovery are closely connected with the knowledge of the animal economy, and of the properties and effects of medicines ; and as the benefits of medical institutions formed on liberal principles and encouraged by the patronage of the law, are universally acknowledged, be it therefore enacted," etc.

There we have the foundation stones of the edifice. *First*, it is a

public institution established by law. *Second*, its object is to promote the knowledge of the animal economy, and of the properties and effects of medicines. *Third*, for these purposes it is "formed on liberal principles."

Having conferred the usual powers of corporations, the charter proceeds, — "And whereas it is clearly of importance that a just discrimination should be made between such as are duly educated and properly qualified for the duties of their profession and those who may ignorantly and wickedly administer medicine, whereby the health and lives of many valuable individuals may be endangered or perhaps lost to the community,"—and thereupon establishes a system of tests for membership.

Full power and authority was given to examine *all* candidates who should present themselves, respecting their skill in their profession; and if, upon such examination, they "shall be found skilled in their profession, and fitted for the practice of it, they *shall* receive the approbation of the Society, in letters testimonial of such examination under the seal of said Society, signed by the president or such other person or persons as shall be appointed for that purpose." By the next section it appears that if the president or other person shall obstinately refuse to examine any candidate so offering himself, each and every such person shall be subject to a fine of £100, to be recovered by said candidate, and to his own use, in any court within the Commonwealth. This is the foundation of the Society, and it will be seen that its whole object was to prevent medicine from being administered, first, ignorantly; second, wickedly. Not one word is to be found as to whether the candidate practises in accordance with the opinions of the majority, or whether he believes what is taught in existing schools.

There are two qualifications, and two only, and these qualifications have been guarded by the Legislature of Massachusetts, at every point from 1781, till now; and these qualifications are education and character.

We have been admitted into this Society, as having the necessary qualifications of education and skill in medicine, and of personal character. There is no charge that we have since lost either of those qualifications.

In 1789 the powers and duties of the Society were further defined, and the penalty for refusing to examine "such as may apply" was changed in amount and made applicable to the officer appointed to examine the candidates. The act authorized the Society to describe and point out such medical instruction or education as they should judge requisite for candidates; but no other course of study or previous preparation seems ever to have been pointed out under this or subsequent acts, than such as is prescribed by the third article of the By-laws, — a sound mind, a good moral character, proper age, some acquaintance with Latin, geometry, and experimental philosophy, previous study of three years with some

respectable physician or physicians, and attendance upon two full courses on anatomy, physiology, chemistry, materia medica, midwifery, and the theory and practice of medicine and surgery. No man's belief or mode of practice was here referred to, and no pledge required, other than was furnished by education and character. The Massachusetts Medical Society did not yet believe it had the power, nor dare to proclaim the will of the majority as absolute truth, and to crush out liberty of thought and freedom of action among its members.

In 1803, the Society was authorized to increase its membership beyond seventy, and to choose as members "*any* physicians or surgeons resident within this Commonwealth, "and to confer upon Councillors the powers before exercised by the whole body; and provision was made for the appointment of five Censors to examine "*all persons*" offering themselves, who had followed the prescribed course of study; and if approved by a majority of the examiners, and of good moral character, they "*shall be*" admitted as members after three years' approved practice. In addition to this, all who have received the degree of Bachelor of Medicine at Harvard University, after three years' practice, "*shall be*" admitted as members. In 1831, this provision respecting three years' approved practice was repealed.

No exclusiveness appears up to this time. The gates swing wide open to men of education and character, and the legislature may be supposed to have intended a pretty liberal basis for the Society when it provided that "*all persons, etc.*" who were able to pass the examination, and that graduates of the medical school at Harvard, without an examination,—embracing, almost necessarily, men of radical and widely divergent views and habits,—should be admitted members of the Society.

In 1836, the revised statutes, chap. xxii, provided for districting the State and the appointment of Censors, who, under a penalty of four hundred dollars for refusal, *shall* examine all who offer themselves, if they have received the prescribed education and are duly qualified as candidates; and they were allowed to admit, without examination, persons from other States who had received an education equivalent to that prescribed here, and who had been duly examined and approved by some competent authority. Here, again, no test but education and moral character. We look in vain to the statutes for even the faintest sign of favoring any particular school of medicine for the State.

If there were any one thing required to prove the general and comprehensive character of the Massachusetts Medical Society, and that it was designed by the State of Massachusetts to include every physician who had any claim as such, the following section of an act passed by the legislature in 1818, chapter 113, section 1, would be sufficient:—

*"Be it enacted, etc., That no person entering the practice of physic or surgery after the first day of July next shall be entitled to the benefit of law for the recovery of any debt or fee accruing for his professional services unless he shall previously to rendering those services have been licensed by the officers of the Massachusetts Medical Society, hereafter to be designated in this act."*

It matters not that this law was soon after repealed at the request of the members themselves, the fact remains, that the legislature designed to include *all* physicians within this Society.

No further legislation upon this subject has been made, except in 1859, when we find an act providing that no person shall hereafter become a member of the Massachusetts Medical Society, except upon examination by the Censors, but that "Any person of good moral character found to possess the qualifications prescribed by the rules and regulations of said Society *shall be* admitted a member of the Society." If this altered the law it was only by the exclusion from membership of the graduates of the Harvard Medical School, or of other medical schools referred to in the By-laws, unless previously examined. The right to refuse membership to "any person" properly qualified under the rules and regulations is here expressly denied. This bolt, apparently aimed at the old medical schools, cannot be diverted against the homœopathists, for the rules and regulations provided no other course of study and preparation than we have before referred to, — and the Society was not yet so venturesome as to ask the suppression by law of such of its members as were so earnest in the advancement of medical science as to brave the terrors of its excommunication rather than surrender the rights they acquired under the act of incorporation, and all subsequent enactments.

In this rapid review of the legislation in reference to membership, we have dwelt only upon the provisions relating to the question who may become members.

We believe, and we defy any one to show proof to the contrary, that Massachusetts meant what she said she did, — to promote medical science, to encourage faithful endeavors to improve the health of her people by any method of study or practice. We deny that it has ever been her policy to foster a special school of medicine, or to raise up barriers against progress and the freest inquiry. Her Medical Society was not incorporated to promote the health of her people in any one way, but long since she took to heart the wise words of old John Robinson, — "more light yet," — and opened the doors to all upright, educated medical men.

The power of expulsion the legislature disposed of in few words. In the original act of incorporation it gave the Fellows power to expel or disfranchise any Fellow.

No one will claim that this power can be exercised arbitrarily or without just cause. Members of the Society have vested rights in



its property and franchise, and they have a reputation as members, and no majority vote can deprive them of it. The test of education and character having been once applied, some justifiable cause must be shown for taking away what the State has said "shall be" granted. In the case of Barrows against the Massachusetts Medical Society (reported in 12 Cushing, Rep. 402), Chief-Justice Shaw, while refusing a mandamus to compel the plaintiff's reinstatement, expressly put it upon the ground that the Society had shown gross immorality on the part of the petitioner in a professional transaction, and he strongly intimated if the Society had acted in violation of his rights, from haste or prejudice, a mandamus would not have been refused.\*

The only causes for expulsion from a society of this description are, (1) conviction of an infamous crime by the civil tribunals; (2) conduct inconsistent with the purposes and well-being of the society.

The second head (2) is the only one for inquiry here.

It is not enough that a committee of the Society may think our acts inconsistent with its purposes and well-being.

The Society was not established by physicians of a certain school, believing or disbelieving a certain dogma, or dogmas, with the purpose of promoting the knowledge and practice of medicine in accordance with the theories of that school. It is not a homœopathic; or an anti-homœopathic society. It is an institution established and encouraged by public law, for public purposes, in which there is a right of membership upon certain established qualifications, intellectual and moral, having for its object the promotion of the knowledge of anatomy, surgery, physiology and dietetics, and the nature and effects of medicines. It must be conducted upon "liberal principles," and must not discourage the freest inquiries and experiments of science, by putting upon its members the fetters of schools.

The discrimination it is to make, as to membership, is not between schools and theories and dogmas, but between the "duly educated and properly qualified," and those who "ignorantly and wickedly administer medicine."

Membership of this Society by practising physicians and surgeons, having the requisite moral and intellectual qualifications, is

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\* In the expulsion of Dr. Ira Barrows from the Massachusetts Medical Society, we have always felt that the most gross injustice was done him. A prejudice was first created against him in the Society because he was a homœopathist. It was decided, however, by the Councillors, that he could not be expelled on that charge, which was withdrawn, and one of "gross and notorious immorality," the term of the By-law, was substituted. But the whole offence, and that not proved, was that he had technically broken a pecuniary contract with another member of the Society, and one which the Courts would not sustain. By a similar process, it is now proposed to expel us in a manner that shall leave the brand of "GUILTY OF DISHONORABLE CONDUCT," upon us.

a matter of public interest, and favored and secured by law. In construing the purposes and functions of the Society, you will look to the charter only, and not to the uncertain will of a majority of members, for the time being. As the courts have decided: "A member looks to the charter; in that he puts his trust, and not in the uncertain will of a majority of the members."

We were admitted into the Society upon a decision that we had the requisite capacity, moral character, and scientific knowledge. We have continued in full membership, without objection on any of those points, to the present time, and for periods varying from forty years to fifteen years. There is now no charge made that we have ceased to possess the requisite knowledge and capacity for membership, or "ignorantly or wickedly administer medicine." The charges and specifications do not affect our moral character, in any proper sense of the term. It is not alleged that we are guilty of any fraudulent practice or of any false pretences; as, for instance, that we hold ourselves out to the public as practising on one theory, and in fact practise upon another.

The charges and specifications are consistent with an honest line of conduct, followed upon honest convictions, by men having the requisite intelligence and knowledge for membership of the Society.

It is not alleged that homœopathy is a false or dangerous, or even uncertain theory, but only that it is an "exclusive" theory.

It is not alleged that the Massachusetts Homœopathic Medical Society has any intention or has made any attempt to disorganize or destroy this Society. It is only charged that the Homœopathic Society, from its being homœopathic, is "at variance with and tends to" disorganize this Society. This is mere circumlocution. It is only saying that the Society is opposed to homœopathy, and therefore the Homœopathic Society must be at variance with it, and tend to disorganize it, and therefore all members of the Homœopathic Society are *constructively* guilty of an attempt to destroy this Society, although they may not intend it, or be conscious of it, or have done any act in that direction.

Our prosecutors rely upon a By-law of the Society which it is said condemns homœopathy.

By-LAW OF 1860. "Hereafter no person shall be admitted a member of this Society, who professes to cure diseases by spiritualism, homœopathy or Thompsonianism."

In the first place this By-law relates to the admission of new members, and has no reference to the exclusion of members. The fact that the Society did not extend the disqualification to existing members ought to be treated as a judgment on their part that it was not lawful so to extend it.

But let us call your attention to the history of this By-law. It was not adopted at a full meeting of the Society, which consists of about twelve hundred members, of whom some four or five hundred are usually present at the anniversary meetings, but at an

adjourned meeting, at which only nineteen were present, and it was passed in this little room by a vote of eleven to eight.

The spirit in which hostile legislation has been carried by a few persons through this Society is well exemplified by the proceedings of May 25th, 1870 (see Medical Communications, 1870, pp. 158, 9). The By-laws required (By-law XXXII) that no alterations shall be made in the By-laws except at the adjournments of anniversary meetings. At the anniversary meeting of 1870, an adjournment was had for *five minutes*, and that was gravely treated as a compliance with the By-law; and at that adjourned meeting a resolution was carried as the record shows "amid much confusion," that the Society "hereby expels from fellowship . . . homœopaths, hydropaths, eclectics, or what not." The good sense and regard for justice of this Society has treated that resolution as void.

#### POWER AND EFFECT OF BY-LAWS.

But, if the cause for expulsion is not sufficient in law, it cannot be made so by putting it in the form of a By-law or resolution. All By-laws must be (1) in harmony not only with statute law, but with the spirit of the common law, (2) in accordance with the purposes and nature of the charter of the institution chartered; (3) reasonable in their operation on the rights of members. This point has been uniformly established by the courts.

If this Society cannot lawfully expel a member for practising vaccination, it cannot do so by passing a By-law prohibiting vaccination, and expelling him for breach of the By-law. If they cannot expel a member for any given practice, they cannot do so by declaring the practice dishonorable and tending to disorganize the Society, and expel the member for constructive dishonor, or a constructive attempt against the Society.

Discarding all subterfuges, and constructive offences, and circuities, we ask you to look this charge directly in the face, and to deal with it honestly. It is simply this: Our accusers say to us, "You have the requisite intelligence, education, and skill to be members of this Society. There is no imputation upon your moral character. You are practising openly what you believe to be medical science. In that you are encouraged and sanctioned by the Commonwealth in terms as strong as those by which the Medical School of Harvard University is sanctioned. We do not charge you with an intention to injure this society, or with having consciously attempted to injure it. We do not charge you with anything actually dishonorable. You practise homœopathy. We do not believe in homœopathy, and therefore we mean to expel you. In order to do so we are obliged to resort to a little subterfuge and indirect pretence. To give a fair color to our proceeding, and bring it within the terms of the By-laws, we are obliged to call it an attempt to injure the Society, and conduct unworthy an honorable physician. But the only real charge is that you practise

homœopathy. The only real question is whether for *that* you can be expelled from the Society."

#### HOMŒOPATHY SANCTIONED BY LAW.

It is established law in Massachusetts that homœopathy is medicine; and that a person fit to practise medicine on the theory of homœopathy, is entitled to a degree in medicine, and to practise medicine, and to hold himself out to the community as a practitioner in medicine. The Act of 1867, ch. 27, to incorporate the New England Homœopathic Medical College provides, in section 3, as follows: "The trustees, together with the regularly constituted officers of the New England Homœopathic Medical College, shall have power to confer the degree of doctor in medicine, subject to the restrictions and regulations which are adopted and required in conferring the same degree by Harvard College and the Berkshire Medical Institution." The degree is not of doctor in homœopathic medicine, but of "doctor in medicine." It is to the same effect, and carrying with it the same declaration, with a degree of doctor of medicine given by Harvard College, or the Berkshire Medical College. The legislature of this Commonwealth has encouraged homœopathy by incorporating hospitals and dispensaries and medical colleges based upon homœopathy exclusively (Acts 1855, ch. 411; 1856, ch. 191, 251; 1867, ch. 27).

This Society, from which our accusers hope to expel us, derives its character and all its powers from the same legislature. The legislature has not made it an allopathic or an anti-homœopathic medical society. The legislature has made it a medical society in the broadest terms. And the same legislature has declared that homœopathy is medicine, the practice of homœopathy is the practice of medicine, and that the degrees given by the Homœopathic Medical College are degrees in medicine generally in the same manner as the degrees given by Harvard College. You cannot expel us for practising homœopathy without violating the charter on which the Society rests. You cannot legally, by however large a majority, change it to an allopathic or anti-homœopathic society. The law will not permit you to say that homœopathy is not medicine.

#### HOMŒOPATHY RECOGNIZED BY OTHER STATES AND THE NATION.

Homœopathy has been recognized as medicine by the highest public authorities in other states and countries.

There are incorporated homœopathic medical State societies in the following States: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan. Also, in the following, the State societies are probably incorporated: Wisconsin, Minnesota, Iowa, California, Kansas.

Besides these eighteen State societies, there are more than sixty



local or county societies in active operation, many of which are incorporated. In New York, at the time when this effort is being made to ostracize us, some of your confrères are endeavoring to unite the two schools in one society.

#### HOMŒOPATHIC MEDICAL COLLEGES.

There exist also the following incorporated homœopathic medical colleges: Pennsylvania, 1; New York, 2; Ohio, 2; Illinois, 1; Missouri, 1; Michigan, 1; Massachusetts, 1. In addition, the Michigan legislature has passed a law ordering the appointment of two professors of homœopathy in the Michigan University, and the Boston University has just established its Medical Department under homœopathic auspices.

#### INCORPORATED HOMŒOPATHIC HOSPITALS.

The following homœopathic hospitals have been chartered by State legislatures, and have been established: Massachusetts, 1; New York, 7; Pennsylvania, 2; Ohio, 2; Illinois, 3; Missouri, 1. Besides these there are upwards of twenty other hospitals or asylums under homœopathic care in the United States, in which homœopathy is permitted or required by law.

#### INCORPORATED HOMŒOPATHIC DISPENSARIES.

There are twenty of these of considerable size, in active operation, and a large number of smaller ones which do not assume a corporate organization. In one of the homœopathic dispensaries in New York city 41,714 patients were treated last year, 7,384 visits were made, and 84,648 prescriptions were given, making it one of the largest, if not the largest, dispensary in the country.

#### THE EXTENT OF THE PRACTICE OF HOMŒOPATHY.

The principle of homœopathy was first enunciated by Hahnemann in 1796. It was twenty-nine years after this, in 1825, before its first advocate in this country, Dr. Gram, came to America. The opposition and ridicule which was exhibited by the profession prevented its careful study and examination by them, and in fifteen years, in 1840, there were scarcely a hundred physicians believing it in the United States. In 1848 a medical school was chartered in Philadelphia for the teaching of its principles, and since that time its growth has been rapid until, as you have seen, it has become a power in the land. Already more than five thousand physicians have adopted its principles, and practise in accordance therewith. It has gone into every circle of intelligence and refinement, and is esteemed in proportion to the intimate experience with it.

#### LITERATURE OF HOMŒOPATHY.

There are of homœopathic journals, published and well-supported in the United States alone, three quarterlies, seven monthlies, and one bi-monthly. Not less than one thousand volumes have been

published relating to homœopathic medicine; and more have been issued during the past year than ever before in the same time. I here present for your examination, as showing the broad scope of them, three volumes but just issued:—

The first, a book of 239 pages on Ophidians, is an exhaustive treatise on serpents and their poison; the next a volume of 544 pages, issued in Detroit, Mich., is an elaborate and careful study of 160 new remedies recently proved upon the healthy human system, and introduced into the *materia medica*; the third is perhaps the handsomest and most complete work on Veterinary Medicine ever issued. It is a large octavo of 658 pages, and carefully describes every form of disease found in domestic animals. Thus showing that homœopathy is not alone applicable to creatures with imagination, but has won other triumphs.

#### ACTION OF THE GOVERNMENT REGARDING HOMŒOPATHISTS.

I might call to your mind the dismissal by our national government of Dr. Van Aernam, commissioner of pensions, for the sole reason that he removed subordinates on account of homœopathic belief; also the subsequent reinstatement by the government of the men removed by him. So, also, within the year past our State government has had under commission as militia surgeon and assistant surgeons, three men who were known to be homœopathists. The time, therefore, is past, when you may think to ostracize men for adopting the homœopathic belief and practice in medicine.

#### CONDITION OF HOMŒOPATHY IN FOREIGN COUNTRIES.

In Europe, where, thirty years ago, we were told that it was dying out, homœopathy was never so extensively practised as now. More than thirty hospitals and asylums have adopted this practice. There are upwards of two hundred practitioners of it in Paris alone. It is taught in several universities by a distinct chair. In Saxony, for several years, every pharmacy has been compelled to maintain a separate homœopathic department. In the German army are many homœopathists. Among them the philosophic Grauvogl, noted for his work on the science of Homœopathy, occupies a high position. In every court in Europe homœopathy has been introduced, and is used by a fair proportion of the nobility and gentry, as well as by men of letters, and families of the largest influence and intelligence.

In Brazil, and some portions of South America, it has already become the prevailing or "orthodox" practice. It has been favorably introduced among the nations of China and Hindostan, and a handsome monthly is issued in Calcutta. In Australia, a homœopathic hospital has been established, and in New Zealand a homœopathic medical journal is published.

But here, in New England, in Boston, in the year 1873, an attempt is made to brand as "guilty of conduct unbecoming and

unworthy an honorable physician," fellow-members of your Society, of admitted intelligence and character, because they practise medicine in that way!

#### WHAT IS HOMŒOPATHY?

We have been treated, here and elsewhere, to certain opinions quoted from Hahnemann's *Organon*, to show what homœopathy is. These would be in evidence, if it were proved that they were the opinions of the persons accused, or that the *Organon* was to homœopaths a book of which they acknowledged the plenary inspiration, and whose every word was of binding force upon them. But that is not pretended; and, if it were, the pretence could be easily disproved. That the *Organon* is a book which contains many truths, and statements worthy of careful consideration by every physician, we cheerfully acknowledge; but, at the same time, no men, or class of men, are compelled to subscribe to its opinions or to accept its errors.

Dr. Hering, the distinguished homœopathist of Philadelphia, makes use of the following language respecting Hahnemann's theories, in his prefatory remarks to the American edition of the *Organon*: "For myself, I am generally considered a disciple of Hahnemann, and I do indeed declare that I am one among the most enthusiastic in doing homage to his greatness; but nevertheless, I declare also, that since my first acquaintance with homœopathy (in the year 1821), down to the present day, I have never yet accepted a single theory in the *Organon* as there promulgated. . . . Whoever, therefore will assail the theories of Hahnemann, or even altogether reject them, is at perfect liberty to do so; but let him not imagine that he has thereby accomplished a memorable achievement. In every respect it is an affair of little importance."

If everything written by the so-called "wise men" on medicine were to be taken as evidence of present views, we could delve into the past medical writings and show you opinions and practices which would make your cheeks tingle with shame, that such things could be. We would not have to go back far to the time when physicians relied for cure on such compounds as the all-powerful *Theriac* of *Andromachus*, with its sixty-one ingredients, the most essential of which was the dried flesh of vipers; or when the *Mithridate*, of royal renown and equal complexity, held omnipotent sway over disease; or still later, when, according to the dispensatories of the day, there were mixed, or jumbled together, in a single dose as many as three hundred and eighty-eight different drugs and crude substances, from many of which regard for decency will not allow the concealment of a dead language to be removed.

The past condition of the medical profession has been well stated by Dr. Oliver Wendell Holmes, who, in his address before this Society in 1860, on the Currents and Counter-currents in Medical

Science, showed the abuses it has clung to, and the absurdities it has fostered, and, considering the injury it has done in the past, and the little good it accomplishes in the present, he said, "Throw out opium . . . throw out a few specifics, which our art did not discover, . . . throw out wine, which is a food, and the vapors which produce the miracle of anæsthesia, and I firmly believe that if the whole *materia medica as now used* [the italics are his] could be sunk to the bottom of the sea, it would be all the better for mankind, — and all the worse for the fishes."

Dr. James Rush, of Philadelphia, a distinguished physician, says: "Upon these points, and bearing in mind that we have now in medicine the recorded practice of more than two thousand years, let the reader refer to the proceedings of the medical profession during the prevalence of the so-called 'Asiatic cholera,' and he will find their history everywhere exhibiting an extraordinary picture of prefatory panic, vulgar wonder, doubt, ignorance, obtrusive vanity, plans for profit and popularity, fatal blunders, distracting contradictions, and egregious empiricisms."

When we consider the fiercely conflicting sects which in the history of medicine are recalled by the names of Dogmatist; Theorist, or Rationalist; Empiric, or Experimentalist; Eclectic, Gymnast, Atomist, Methodist, Pneumatist, Chemist, or Mineralist; Botanist, Anatomist, Derivatist, Casual Inducist, or Iatro-mathematicist, — when we recall how humoral pathology gave way to solidism, and that in turn to vitalism, and both yielded to animism, — how the rationalism of Hoffman and the eclecticism of Boerhaave were displaced by the dynamic theory of Cullen, and that by the sthenic and asthenic theories of Brown, — we may say with Girtanner, "As medical science has no firm principles, as nothing in it is fixed or settled, as there is but little certain authentic experience, it follows that every physician has the right to follow his own opinion." And in this state of medical matters, when we are told even by this prosecuting committee, that this society has no system binding on its members, are we forbidden to believe what we think is true, or to practise what we believe?

We have been told what homœopathy is by the prosecuting committee; and by the definition it was evident that they were very ignorant concerning it.

I must claim the privilege of correcting their vague definition, and of stating in a few words what homœopathy is; and I begin by telling what it is not.

1st. Homœopathy is *not* infinitesimal doses.

2d. Homœopathy is *not* the doctrine of psora, nor any other theory, in regard to the nature and origin of disease.

Homœopathy is, or is based upon, a general principle in medicine, that all drugs possess the power of removing from the human system symptoms similar to those which they are capable of producing in it; and this principle, as expressed by the Latin aphorism



*Similia similibus curantur*, is by some considered a great law of nature for the control of disease. What are its boundaries, or where are its limits, remains yet to be determined. From this, then, follows naturally,

1st. That to obtain knowledge of the effects of drugs upon the human system, experiments must be made with them in health.

2d. That to obtain the exact effect of a drug, it must be administered pure and unmixed.

From these has resulted, by experiment, the following discovery :

3d. That small doses of a drug will remove symptoms similar to those which the same drug will produce.

It has been sometimes said that the infinitesimal size of the homœopathic dose carried with it so much of absurdity that any one believing in it must be either a fool or a knave.

Pause ere you act upon such an assertion, or suffer your minds to be prejudiced thereby. The size of the dose has nothing whatever to do with the principles of homœopathy. The proper dose is to be found only by experiment ; and every homœopathist, and every member of the Homœopathic Medical Society has a perfect liberty and right to make these experiments, and use doses of any size which he chooses. But so many times have these experiments been repeated, that it has come to be an accepted fact that they cure best in such quantities as shall not produce any toxic or poisonous effects, or aggravation of the symptoms already existing. If the millionth part of a grain will cure better than a hundred grains, is not the physician bound to use the smaller dose?

But before you decide upon the utter inertness of the minutest quantity, let me remind you of the recent experiments and demonstrations of M. Davaine, before the French Academy, on the subject of Septicæmia. From these experiments, which have since been verified, it is seen that the ten trillionth part of a drop actually destroyed life when injected into the veins of a Guinea-pig.

Now, a tank to hold ten trillion drops must have, according to Simpson, an area of 2,500 square miles and a uniform depth of 300 feet. It might hold the waters of ten such lakes as Champlain ; and one drop would be raised by it to the sixth centesimal dilution. With this testimony, who can longer dispute the power of infinitesimals? And the demonstration of its power to kill, if it does not show its curative power, at least relieves from the opprobrium of inertness.

Homœopathy is founded on a certain fixed principle or law. The precise explanation of the manner in which its remedies act, whether by the so-called Substitutive Method of Trousseau or that of Electric Affinity is unimportant, and all theories in regard to the origin and nature of disease are foreign to it, and belong only to individual opinion.

In accordance with this law, medicines must be given for precisely such symptoms as they are capable of producing. Thus, in disease of the head, a medicine is required which affects the head, not the stomach; if the stomach is disordered, one acting on that organ rather than on the skin. And the medicine must act, not in a general manner upon the organ, but upon that particular portion of it which is diseased. It is useless to administer a medicine which affects only the mucous membrane of the stomach, when either the muscular coat, or the nervous filaments of that organ are the seat of disease. It must also have the power of producing an effect upon the organ similar to the disease. Syncope may be occasioned alike by anemia or hyperemia; but, if by the former, it would be wholly useless to administer a medicine which produces plethora. Temperament, age, sex, disposition, temperature, and many other conditions, require to be taken into account by the physician; but they do not in the least change the character of the law.

So far we have a *theory* merely, but fortunately one that can easily be put to the test. Let me ask these my associates "on trial," let me ask the five thousand homœopathic practitioners in the United States if they have not frequently seen a decided and marked curative effect from a minute dose of Aconite in fever, Ipecacuanha in vomiting, Mercury in diarrhœa, Coffee in sleeplessness, Belladonna and Glonoine in headache, Hepar sulphuris in croup, Arnica in injuries, and Chamomilla in many diseases of infancy. I know well that their answer will be, "Most assuredly we have;" and proof of this character might be obtained in thousands upon thousands of cases. Even the most bitter opponents of homœopathy are finding this out slowly, and, like Sidney Ringer, are giving medicine homœopathically—but "*on physiological principles!*"

This principle in medicine has been hinted at from the time of Hippocrates by most thoughtful writers, but it remained for Hahnemann to seize upon the idea, and, by the devotion of forty years of his long life in studying the poisonous effects of drugs upon his own system, to develop a new materia medica, which has so far proved a permanent one. If, during this long life, which reached to almost ninety, Hahnemann, in his enthusiasm, said anything untrue or unwise, are we, who accept the truths he developed, to be held responsible therefor?

It was to examine these statements and to develop these truths, which are of a strictly scientific and in no sense of a partisan character, that this Homœopathic Society was formed in 1840, not "at variance with" nor "tending to disorganize the Massachusetts Medical Society," but as a principal in and supplementary to the Society, in accomplishing a work which the Society, properly covering the whole domain of medicine, has, to the present time, continued to neglect, "and this special society has faithfully done its

work. It has investigated this branch of the healing art, has made provings of hitherto unknown drugs, — and, since its formation, that little band of only five persons in New England, has increased more than a hundred fold.

But we, as members of that Society, are bound by no pledge, either direct or implied, that we will practise medicine only in accordance with a certain exclusive theory or dogma. Our only professional pledge is to cure our patients by the best means in our power; and whenever you can show us anything better than homœopathy, be assured that we shall not hesitate to accept it. For this purpose, we claim to stand, as physicians, ready to receive any new truths; and we ask you to be as ready to examine what we have so carefully studied and believe to be true. So far as I know it has never yet been claimed for homœopathy that it had reached perfection. All that it attempts in medical science is the application of drugs to the cure of disease. It is limited to the vital or dynamic sphere. In the purely mechanical or surgical appliances, in dietetics, in hygiene, in much that goes to make up the practice of the physician, homœopathy is not applicable, and every physician must here use his best judgment. So too with anæsthesia, and chemical antidotes in poisoning. Still further than this I go, — and I think every member of the Homœopathic Society will agree with me, — *when* it is clearly proved that any drug or remedy in any case or form whatever, is the best thing for a patient, it is the physician's duty to his patient and to his profession to administer such remedy, but until such a demonstration is given, it is equally his duty to give what he thinks is best, be it homœopathic, allopathic, or heteropathic.

The community are sufferers by all the quarrels, piques and jealousies among physicians, and often to the extent of loss of life. Such discords are softened and removed by free social intercourse with men of differing views. And this humanizing influence is one of the great aims of the Massachusetts Medical Society, whereby the benefit of the whole people of the State is sought. Now, if bigotry erect barriers between educated, honorable men, that action is, in itself, "at variance with, and tends to disorganize, the Massachusetts Medical Society," and even now, as all confess, threatens its very existence. And who, then, are the offenders?

If you proceed to expel the accused, or to recommend their expulsion, you will not only be acting in violation of law, but, as we believe, offend the sympathy and good judgment of the community, against the advice of the most honored members of this Society. In 1850, a committee, composed of Doctors George Hayward, J. B. S. Jackson, and O. W. Holmes, made a report from which it would seem that at that time a member could not even resign his membership by reason of holding to the principles of homœopathy. That committee recommended that homœopaths be permitted to resign. Referring to the general abandonment of all theories there-

tofore adopted by allopathic physicians, as humoral pathology or solidism, and the successive theories or schools of Boerhaave, Cullen, Hoffman, Brown, Rust, and Broussais; and the wide openings of science in all directions, the report commends the Society to do no more than to avoid giving positive sanction to homœopathy.

In 1854, a committee was appointed on a resolution offered by a Dr. Spofford, recommending the expulsion of homœopathists. That committee reported through Dr. Jacob Bigelow, and the report was adopted by the Councillors, and is to-day of binding force upon the Society. (See *Modern Inquiries*, by Jacob Bigelow, M.D., p. 326 ) It begins with the following striking paragraph:

“The Massachusetts Medical Society was incorporated mainly for the purpose of establishing a proper standard of medical education, and of ensuring a competent degree of knowledge among those who should be authorized to practise the profession of medicine in this Commonwealth; and we are not aware that the Society possesses any power to coerce men, after they have been thus educated and qualified, to embrace or renounce any theoretical opinions or modes of practice which they may innocently believe.”

This declaration, from so high a source, may well lead this Board to reflect deeply before lending themselves to this prosecution. The whole report we earnestly commend to their consideration. Among other things it charges the system opposite to homœopathy usually called the “heroic,” as alike productive of evil to the patients. It recommends the Society to trust to the lessons of time rather than to weapons of warfare.

We also refer you to the address of Henry J. Bigelow, M.D., in the *Medical Communications* of 1871, p. 181, especially pp. 234-6, warning this Society against being led to unwise courses by the American Medical Association.

We next call your attention to a report or “representation” to the American Medical Association, by a committee of the Councillors of the Massachusetts Medical Society (see *Medical Communications* for 1871, vol. XI., No. 5, *Proceedings of the Councillors*, pp. 203-9). This, I understand, was unanimously adopted. It admits that the Society has no power to adopt by-laws, except such as are reasonable, and that the courts of law, and not the Society, are to judge of the reasonableness. It takes the ground that members, having passed the examination and established their legal right as Fellows of the Society, do not render themselves liable to expulsion by afterwards engaging “in the practice of medicine according to some exclusive dogma, such as homœopathy.”

Although they denounce homœopathy in terms that show them very hostile to it, they seem fully aware of the danger of violating their charter and being rebuked by the courts of law, if they attempt to expel homœopathists as such. To their honorable minds the device did not suggest itself, to which our accusers have resorted, of declaring homœopathy dishonorable and then trying



us, not for homœopathy, but for dishonor. They also condemn the resolution of this society above referred to, adopted May 25, 1870, undertaking to expel homœopathists. They say, "This resolution was passed near the close of meeting, amid much noise and confusion, and is, of course, of no legal binding force."

This whole report is in many respects one of the most careful and thorough ever made to the Society, and I must recommend its considerate perusal not only to you but to every member of the Society on whom, as it was unanimously adopted by the Councillors acting for the whole Society, its statements are of binding force. It will ever be a strange chapter in this Society's history that a body which could adopt such a report, thereby giving it binding force, should, almost in the same breath, commence or even allow these proceedings in violation of it.

#### THE EVIDENCE.

But while I am surprised that these charges have under such circumstances been made, I am still more surprised at the entire absence of any attempt on the part of the prosecutors to sustain them by any evidence. There has not been presented an iota of proof which could be admitted in any court of law. The statement of a prosecuting officer is not evidence. The belief that the Massachusetts Homœopathic Medical Society is at variance with and tends to disorganize this Society, does not make it true.

If we go back to the disgraceful scene in the beginning of this trial,—November 21, 1871,—when the chairman of these prosecutors, in a bombastic and offensive manner, gave us his opinion of homœopathy—which we all knew to be false—and mixed this with low and vulgar jest and insult, we cannot—for a moment suppose that this Board will look upon that as evidence.

And in the present stage of the trial, when the only remaining one of the five prosecutors presents similar opinions, though in a manner most courteous and unobjectionable, and clothed in words prepared by one of the most acute legal minds of this Commonwealth, you cannot accept this as evidence. Nor can you take the words written by Hahnemann a half century ago and apply them to us, and assume them to be our opinions at the present time. Neither can you, on the prosecutors' statement, and without proof, decide that the Massachusetts Homœopathic Medical Society is antagonistic to, and tends to disorganize and destroy, the Massachusetts Medical Society, and that membership of both is incompatible.

On the other hand, there has been evidence presented, that there has never been any attempt on the part of the persons accused to disorganize or destroy this Society. That though members of the Massachusetts Homœopathic Medical Society, yet that Society has never sought by any act, either directly or indirectly, to injure, disorganize, or destroy the Massachusetts Medical Society; that the

accused had always been faithful and efficient members of this Massachusetts Medical Society, and were in no way guilty of the charges and specifications as made, and were entitled by the charter and by-laws of the Society to a full and complete acquittal.

Examine in detail the evidence introduced by the accused, and you will see —

1. That the Homœopathic Society is established by law, and that membership of it cannot be treated as an offence, much less a crime for which expulsion from a legal society becomes the penalty.

2. That homœopathy has again and again been pronounced a legitimate system of medicine in this State by the people in General Court assembled.

3. That the accused have always been good and faithful members of the Massachusetts Medical Society, as shown by the evidence of the officers of this Society.

The testimony of the accused, and it could have been confirmed by a hundred additional witnesses, but that your Board ruled that cumulative evidence on this point was not necessary, has fully proved that all these charges and specifications are untrue.

4. That the accused have never, individually or collectively, attempted to disorganize or destroy the Massachusetts Medical Society.

5. That the Massachusetts Homœopathic Medical Society has never in any manner, or by any act, attempted to disorganize or destroy the Massachusetts Medical Society.

6. That the accused are not now, and never have been, pledged to practise medicine in accordance with any "exclusive theory or dogma"; but that they seek only the best method of curing their patients

7. That the accused have been, severally, good and faithful members of the Massachusetts Medical Society for terms varying from sixteen to forty-eight years, and have in that time regularly contributed to the maintenance of the Society, and to its funds and property.

With the entire absence of evidence against the accused, and with the mass of positive proof that they have never sought to disorganize or destroy the Massachusetts Medical Society, only by the greatest perversion of your powers as a Board of Trial, could you pronounce them GUILTY.

*Gentlemen:* While I was meditating how to frame the defence of my friend against these charges, the first thing that struck me was the singular character of the trial. Indeed as I look back at what has taken place here, I am amazed at the unfairness, might I not characterize it still more severely, of the whole proceedings. We may fairly claim that such a trial, if this proceeding deserve the name, is as unprecedented as it is unjustifiable.

## WHO ARE THE MEN ON TRIAL?

Look at the character and standing of the accused, and the methods adopted by this singular tribunal.

DR. WILLIAM BUSHNELL, a man of singular purity of character and life, who after faithful study under approved teachers has conscientiously performed the duties of his profession, and whom the breath of slander has never touched ;

DR. MILTON FULLER, a favorite student with the elder Dr. Townsend, a painstaking pupil in a school of acknowledged ability, who has for more than forty years devoted himself to his profession with universal acceptance, and finds himself now, for the first time in his life, charged with conduct unbecoming a gentleman and a physician ;

DR. H. L. H. HOFFENDAIL, who graduated from Harvard University with the leading honors of his class, and who has brought the severe training and broad culture of the University into the service of the profession, and whose reputation is such as may well be envied ;

DR. SAMUEL GREGG, who for nearly half a century, day and night, devoted himself to the welfare of his patients, among whom were some of our foremost men in professional and mercantile life, glad to trust to his intuitive skill and educated sagacity their own lives and those of their families, but who in early professional life was compelled to join this Society, in order to have the benefit of consulting with its members, and at a time when he was so poor that even the ten dollars required for membership was a serious tax on his scanty resources. Here in his old age, after having done all that the Society could even ask of a member, after having honored the Society, as few men are privileged to do, by a life of rare usefulness and deserved success, after having believed and practised in accordance with the homœopathic principles for more than thirty years, he was to be expelled and dishonored on the accusation of men belonging to a generation which was in its cradle when he was watching at the bedside of some of our noblest citizens, their trusted counsellor, to whose skill and care they acknowledged that they owed health and life ;

DR. GEORGE RUSSELL, now nearly fourscore years of age, the good physician of three successive generations, whose professional success testifies for him, and whose uprightness, honesty, and integrity are unimpeachable ;

DR. DAVID THAYER, whose professional skill has not only been rewarded with a large practice and the well-earned confidence of a wide and influential circle, but whose admitted ability and integrity have advanced him to many places of public trust ;

DR. BENJ. H. WEST, whose character as a scholar, as a physician, and as a public man, needs no eulogy here.

These are the men whom you seek to brand as guilty of a crime worthy of expulsion, from whom you would take rights given them by the State; whom you would deprive of property which they themselves have helped to contribute to the Society and to science.

#### THE MANNER OF THE TRIAL.

In a matter of so great importance you will allow me briefly to review the manner of conducting the trial of such physicians as these. Without ever having, by word or deed, sought the injury of the Society, never having introduced into it any disturbing question, these men are summoned before a so-called Board of Trial, and charged with guilt. This Board becomes at once juror, judge, and executioner. In the first part of the trial they are in constant communication and consultation with the prosecuting committee: charges too vague to base any proceedings upon, or even to admit of an answer, are brought before them; and the proceedings are only arrested by an injunction from the Supreme Court. The Court refuses to express its opinion. Again the trial begins with old charges amended, new charges introduced in such a manner that the Board itself is unable to tell us whether the trial is before the old Board on the old charges, the old Board on the charges amended, the old Board on the new charges, or before a new Board on the old charges, a new Board on the old charges amended, or a new Board on the new charges, or the old and the new Boards amalgamated on each or all of these. If there was any pertinency in the stale, rude story, told by the chairman of your prosecuting committee, of the Little Joker, first here, then there, and then nowhere, it surely applies best and closest to this trial and these charges.

Although clothed with full powers to grant our reasonable requests, this Board refuses to allow the friends of the accused, not members of the Society, to be present; refuses to allow the press to report its proceedings; refuses to allow a sworn reporter, selected by both parties, to make a verbatim report of the proceedings; refuses to allow the persons accused to employ a reporter to do so; refuses to allow a clerk or amanuensis to sit beside them and take notes; though it employs, as clerk and recorder of all its doings, for its own private use, the secretary of the Society, who sits with them in secret session; refuses to allow legal counsel in a matter affecting property and character; refuses to allow counsel to be present even to advise; refuses to allow any challenge of said jurors and members of the board of trial, even if known to be persons prejudiced and determined to convict. And yet, this is called a Trial!

Call it rather a Star-Chamber Council, inspired by envy and malice, determined, in some way or other, to punish their fellows, and well aware that the end could not be reached by any means which fair play and the law allow; by any means which would bear



the light ; which the public would not condemn, if the public could see all that is done.

I am well aware that what has been said here will have little effect upon the ultimate result : but bear in mind that the spirit which incited this trial and the manner in which it has been conducted, the secrets which have *not* been kept within these closed and doubly-guarded doors, will be written in characters more enduring than your lives, will be spread before an audience a thousand fold larger than could come within this hall. And while you may fancy that we are the men on trial, you will find that it is yourselves who are passing through an ordeal, of which the verdict will be rendered by those for whose benefit our profession is established.

Do not think that the disgrace of such proceedings will rest on our honored Mother, the Massachusetts Medical Society. No, gentlemen, we shall always refuse to believe that your proceedings thus far have been sustained by the honest judgment of that Society, which was founded by honorable men, inspired by a liberal and catholic spirit. However you may decide this question, we have little to fear. All history shows that truth is helped by narrow and malignant attacks upon her. She gains more from the malice of her enemies than even from the ability of her friends. HARVEY was ridiculed ; JENNER was denounced by the profession which now cherishes his name as its proudest title to the gratitude and confidence of the community. Already we have proof that coming generations will have reason to be thankful for the unsuccessful assault upon us last year. The cordial sympathy and world-wide notice it got for us, poured into our hands the means to found and most liberally endow a Homœopathic Hospital to relieve the sufferings of future generations.

Go on then, gentlemen, render such verdict as you may think proper. But the result of this trial will be to give us still larger and kinder support. A second wave of public sympathy will found a University for the study of our system, and to prepare for us successors, still better fitted than we are to serve that large and growing portion of a community which accepts no dictation as to what system it shall favor ; which has made up its mind, after trying the allopathic method for centuries, that homœopathy better suits the human system — that it is amply able to treat any disease, and is in all cases efficient and trustworthy.

If you, gentlemen, can afford to contribute thus lavishly to our success, we surely should not quarrel with the prominence and popularity you give us.

## DR. WEST'S DEFENCE.

The Massachusetts Medical Society has rights, to be respected by all its members.

A principal right is that of making by-laws for the promotion of its objects.

In the enactment of by-laws, it is not absolute, but must conform to the fundamental principles of justice, and the basis on which the legislature, which gave it a charter, itself rests. It cannot violate any principle of the Bill of Rights and Constitution of the State. It cannot, contrary to, or in disregard of these, deprive a Fellow of the Society of any of his rights to character or property.

The 24th Section of the Bill of Rights is as follows: —

“Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.”

“SECT. 12. No subject shall be held to answer for any crime or offence, until the same is fully and plainly, substantially and formally described to him, or be compelled to accuse or furnish evidence against himself; and every subject shall have a right to produce all proofs that may be favorable to him, to meet the witnesses against him, face to face, and to be fully heard in his defence by himself or his counsel, at his election; and no subject shall be arrested, imprisoned, despoiled or deprived of his property, immunities or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, except for the government of the army and navy, without trial by jury.”

Of the Constitution of the United States, the first Article in the third clause of Section 9, reads: “No bill of attainder or *ex post facto* law shall be passed.”

Of the Amendments, this is Article I: —

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

“ARTICLE 5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offence, to be twice put in jeopardy of life or limb, nor shall he be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.”

The resolution passed by this Society June 7, 1871, which is made the basis of complaint or accusation, seems to me an *ex post facto* law, because it refers to acts done before the existence of the

law, it having been made on purpose to strike those who had for a long time previously done similar acts, perfectly and clearly within their power, and not contrary to the laws of the Society.

This resolution also aims at depriving a Fellow of his property, immunities and privileges, without a proper trial, by providing that the Board of Trial shall adjudicate the case, substantially making the Board judge, jury, and executioner.

The resolution of the Society set out to strike a blow at the character and fame of a Fellow, and, in so far as it can, disgrace, and render him infamous, by depriving him of his position as a regular, and hence publicly authorized, physician, without trial by jury.

The resolution attempts to interfere with the freedom of speech, by threatening the reputation of any Fellow who shall declare his confidence in a mode of managing disease, which has already commended itself to the confidence of a very considerable part of the best minds in the State, and which constantly asks for the careful consideration of all men, especially those devoted to therapeutics.

The law disputes the right of private judgment, and practically denies that freedom of thought inseparable from, but indispensable to the right to life, liberty, and the pursuit of happiness.

To the assertion and maintenance of this freedom of thought and judgment, the entire history of the Anglo-Saxon race, since the days of the Magna Charta, tends; nor is this race alone in this tendency.

With us, there is no national or established church or religion. Although theology may assume to hold some doctrines as certain,—as, for example, the existence of a God, the consciousness of the soul, the belief in a future existence,—yet no man is held responsible for scepticism.

In government or political science a similar condition obtains. The feudal system has perished. The vassal no longer serves his lord. The king, himself, finds it hard to write, with its original force, *Dei Gratia Rex*. Alexander no longer rules over serfs. The troops of the United States return slaves to Southern masters no more.

Freedom of body implies and necessitates freedom of mind. This freedom is guaranteed by the writ of *habeas corpus* and other legal appliances, especially the constitutional provision securing freedom of speech and the liberty of the press: the opportunity of printing and uttering conclusions obtained through freedom of thought. This freedom is indispensable for the security of the individual, in investigating new or reviewing old ideas.

The Constitution secures every individual in his rights of property. Is not his mind more than gold? It secures him the right to vote. Is not the vote an expression of opinion; must he not be at liberty to form his opinion? May he not change his opinion?

Every man has this right. He is obliged to exercise it. The child believes the sky very near him, and the earth a plane;—the

child grown and instructed, knows the earth a spheroid, and the sky, vast space. The uneducated thinks water a simple substance, the educated knows it a compound. All the professors of all the universities of earth have, since I became a member of this Society, enlarged their knowledge and so formed, modified, or changed their opinions, by the discoveries of Dagnerre and the invention of Morse. Whose opinions, among the ablest of men, have undergone in the same period, no change as to the applicability of steam in navigating the sea and traversing the land? In the diffusion of intelligence, what would the opinions of men of only forty years ago, now be worth? Nay, of what confidence were the estimates of the authors of our recent civil war worthy, — on which they risked life and all they valued? Did not events compel a change of opinion?

Eighteen hundred years ago, the Roman emperors, holding in their grasp the civil and military powers of the world, ten times put those powers to their utmost tension, to prevent changes of opinion, and failed. The Inquisition played its part in a similar drama; yet the cremadura of Spain and the faggot of Smithfield, alike, came short of their object. The massacre of St. Bartholomew's, instead of making France a unit for Catholicism, finds its sequel in the philosophic period of Voltaire, and the histories of the red revolution and Vendée. The fearful scenes in the valleys of Piedmont are the preludes of the siege of Rome; and the lamentations of the Waldenses have their echo in the roar of the cannon of Garibaldi at Menabrea.

The Constitution of the United States guarantees the right of petition. What does this imply, other than the existence of a grievance and the possibility of its removal? How shall the grievance be examined, but by minds appointed for its investigation, — minds to be enlightened, convinced, nay, it may be, changed, and then advising appropriate action? Where the force, nay, where the sense of this constitutional provision, but in the existence of the right to modify or change opinion?

There is somewhere in an old book this passage: —

"Come, let us reason together, saith the Lord." And one other: "Turn ye, turn ye, for why will ye die?" Were the men addressed not at liberty to exercise freedom of thought or will?

In our country, what is the result of antagonism to its exercise? Let two instances furnish a sufficient answer: —

A *respectable* mob in this city endangered the life of the grand opponent of slavery — yet he lives, honored and enriched by the voluntary gifts of freemen; and his assailants and their successors are in unison with him. Who were they that, within forty years, despite the Constitution, sought to deny to the people the right of petition, and to expel from the House of Representatives its great defender, although he had been President of the United States? What was the result? John Quincy Adams sleeps in an honored



grave, while over the land the right which he maintained is more widely accepted than ever before. Where are his assailants?

Now, if, as I have shown, a man have the right to his opinion, and be at liberty to change it in matters of science, art, law, morals, and theology, has he any less right in the special matter of medicine? Is medicine a science so complete, an art so perfect, as to admit of no change of opinion or act? Is a regular physician a petrification?

I remonstrate against the resolution of the Massachusetts Medical Society as being founded on ignorance of the subject legislated upon, and hence being an invasion of the right of private judgment; a proof of the neglect by the Society of the duty to investigate; and an outrage of the right of the people to the fullest exercise of the mental power of its chartered custodians of the public health.

If the positions taken above be true, is not the resolution or by-law of the Society on which this suit rests, a violation of the fundamental principles of our social system, our government — State and national, — nay, of the laws of the mind itself, and hence inoperative? I believe that the positions are correct, and hence deny the authority of the law.

The Society has the right to summon before it a Fellow accused of violating its laws. Every Fellow will doubtless respond to such summons, hastening to answer any call from associates so worthy of respect and esteem. He doubtless will have the accusation fully and clearly set forth, and be confronted with the witnesses against him. Doubtless he will have a full opportunity of defending himself. But the Society is bound by its charter, which declares that the Fellows shall have power to expel: and, if precedent mean anything, the Fellow accused might expect to have the same opportunity for defence as was allowed to John S. Bartlett, a Fellow, who in 1836, was tried for consulting with an irregular practitioner, by the Councillors first, and afterward in the old hall of the Athenæum in Pearl Street in this city, by the Society *as a whole*.

In the present instance, the accused is brought before, not the Fellows in the full sense of that term, evident on its face and substantiated by the original interpretation of the Society, but before a very small number of the Fellows, with provisions of law allowing even a reduction of this number, appointed contrary to the spirit of the charter, or if not that, contrary to precedent, to enforce a law of questionable authority.

Respecting the right of the Society to summon me, and in accordance with my sentiment of honor, I respond to its call; but I protest against the law, and respectfully deny the authority of the so-called Board of Trial.

I am accused of "conduct unbecoming and unworthy an honorable physician and member of this Society," by practising homœopathy.

If this mean that I profess to practise on "one theory or dogma only," I ask what is the meaning of the advertisement of my name with those of other members of this Society, in the list furnished by the Treasurer to the publishers of the Boston Directory? Does not the whole of our home world recognize this body as the allopathic or old-school society? Does not the neighboring list also show my name as belonging to the homœopathic school? And how is it that my patrons express to me their satisfaction at my possession, in their opinion, of the knowledge of both classes? I simply deny that I follow homœopathy or any theory or dogma exclusively.

In all candor and ingenuonsness, I ask what theory, as an old-school physician, I am to follow? Shall I obey the teaching of my student life, and addict myself to venesection, and leeches, and cupping? Shall I give liberally of cathartics, and spare not counter-irritants? Shall I write prescriptions full-freighted with *Hydrargyri submurias* and *Antimonium tartarizatum*? Or shall I go back to the period when, according to the best information accessible, the demand for drugs by physicians' prescriptions was many times greater, proportionally, than at present? Or shall I adopt the soda-water and expectant treatment? Or shall I yield the field and give the patient up solely to nature, amusing him with ptisans and placebos, and allowing all diseases, whether self-limited or unlimited, to have their own sweet will uninterruptedly? Will you have me resort to the sthenic or asthenic theory, in the treatment of fever? Shall I confine such patients in warm rooms, with no breath of air and no cold water? Or shall I place them in well ventilated and cool apartments, with plenty of water and all means of antiphlogism freely in use? How shall I know what theory is not merely right in your estimation, but likely to commend itself by its results, to my own reason, and give my conscience a chance for peace, should they not be so successful as I might desire? Alas! The lancet, by some unaccountable fatality, is pointless, the leech swims almost undisturbed in his native waters, and the cupping-glass, as a sanguinary measure, is either dusty or broken. Calomel has lost prestige. Tartar emetic vexes far less frequently the souls of nauseated mortals. The practice has changed; the fashion has changed; whiskey is more popular; oleum jecoris aselli cures phthisis, or ought to, while chloral makes all the world rejoice, or gently leads them to profound repose.

In 1839 or 1840, I was reproached by my partner in business, Dr. Johnson Gardner, for not bleeding more freely. On my asking if my patients did not recover as well as those more liberally depleted, the doctor replied that our mutual friend, Dr. Levi Wheaton, of Providence, then practising medicine at the age of eighty-four, "regretted that he had not bled oftener," and hence he — Dr. G. — would advise me to be warned by the example. Dr. Wheaton was one of the most distinguished physicians ever known to the

State of Rhode Island, and having always availed himself of all the light in his possession, justly received the confidence and love of the whole community.

Medical theories have ever been as changeful as the kaleidoscope, their various hues and forms depending on the amount of knowledge — or, it may be, mental independence — of the physicians, on fashion and a host of other causes. At one time the wound is heavily plastered; at another, the weapon inflicting the wound, or, if this be inaccessible, its like is besmeared and bandaged; at another, more simple dressings are the rule, and finally cold water is the cure — all for the unwilling living tenants of the battle-field. A few years ago, the peritoneum was opened only in an operating-room warmed to almost blood heat, and the operation was deemed desperate; now, ovariectomy, still regarded by one with horror, is the chosen field for brilliant triumphs of another. In *anæsthesia*, one body of surgeons regard chloroform as their main stay and sure reliance, another look upon ether as *the* agent: neither can allow that its favorite is liable seriously to injure; neither would yield its point to the other; and yet, unquestionably, both deserve respect, and are animated by the most fervent desire to do good.

Whom of all these shall I follow? Shall I use either agent to blunt the sensation, while borrowing the garter, the broomstick and the washbowl, I perform the annual bleeding, or draw off the suitable allowance from the arm of the future mother?

Not many years ago I met a man who had lost his arm through the wounding of the artery, in an attempt at venesection. Would amputation be resorted to readily, at this day, in such misfortune? Has the treatment of compound fracture undergone no change within a century? What has become of the treatment of small-pox by inoculation? If I amputate, shall I resort to heated pitch, or to ligation of arteries? Shall the wound be invited and aided to heal, or compelled to suppurate? What theory, from the times of *Æsculapius* or *Hippocrates*, shall guide, or rather rule me?

While I am awaiting an answer to this question, I reflect on other branches of knowledge, and find that the galley, with its oars and shields, gave way to the frigate with its cannon; that the cloth-yard shafts of the English archer, by which he was said to carry fourteen Scottish lives under his girdle, were laid up as useless lumber, when the musket, over-matching the coat of mail, made a few men arbiters of the battle; that steam, at first forcing small craft slowly against the river current, now drives the largest ships, in sunshine and storm, against the hitherto resistless force of ocean, and enables a single mind to change the mode of naval warfare, and invalidate the preparations for war, of empires, for centuries. I see the chasseur displace the smooth-bore, the needle-gun defeat cavalry. I see Hoe illuminating the country in an hour, by his press, Morse harnessing the lightning; I see mechanical triumphs innumerable; I behold the relaxation of the grasp of tyr-

any upon the bodies of men, and constant and successful effort for freedom of mind and soul,—and I ask, Can it be that in medicine there is no improvement? Has medicine no guiding principle? Must it ever be empiricism, a system of experiment, a practice founded on experience alone?

I ask the teacher; Dr. John Ware, Professor of Theory and Practice in Harvard University (my highly esteemed private instructor), in an opening lecture in the college, advised his class that there lies at the foundation of practical medicine, one word, *D-o-u-b-t*. Who will deny this?

I ask the practitioner; Dr. Jacob Bigelow, standing at the bedside of a patient in the Massachusetts General Hospital, with the record in his hand, publicly said to the house physician, “I see that you have written ‘better for taking the salts.’ How do you know that the patient was better for taking the salts? Write, ‘better *after* taking the salts.’” This utterance is the indorsement of Dr. Ware’s lesson.

I ask the Massachusetts Medical Society, and receive substantially (respectfully be it said) the same answer.

Under such circumstances, an idea, so peculiar as to arouse curiosity, yet so preposterous seemingly, as to lead to rejection, is presented only to be repelled. But it comes again, achieving such results as to merit attention,—and substantially says, “Try me according to my rules, and accept or reject me, according to the result.” I waived prejudice, and, investigating the claim, became satisfied that the homœopathia is a law of nature,—a conviction strengthened by many years’ observation. Of this law, I gladly avail myself whenever it is possible for me so to do, employing it almost always, and very rarely resorting to the modes of my earlier practice. But I use, in any case, any means, whether in accordance with or aside from the known scope of this law, with which I think I can promote the cure *tute, cito, et jucunde*.

Why is homœopathy an exclusive theory? What is an exclusive theory? If homœopathy be, as is claimed, a law of nature, is it the only law? Can it by possibility be inconsistent with, or exclusive of any other law? Its inconsistency with theories of any man in no wise invalidates its truth. Its opponents may as well declare the law that turns the needle to the pole,—the law which creates navigation,—an exclusive theory, because it does not include the determination of the latitude and longitude. Or shall we ignore or deny the truth that the square of the hypothenuse equals the sum of the squares of the other two sides, because it does not include all other geometrical truths?

For my part, I am satisfied that there are other laws lying very near, but not as yet within our reach; and that any man is not only justifiable, but that he will be discharging an imperative duty, in administering whatever he intelligently and conscientiously believes to promise relief.



Now, because after taking pains to investigate, and becoming satisfied of the truth and force of the homœopathic law, I have made use of it, and still continue to employ it, at my discretion, for the benefit of my fellow-creatures, I am accused of conduct unworthy an honorable physician! On what theory or dogma shall I practise? Will the Massachusetts Medical Society advise? Have they anything positive and reliable to advance? Which of the various theories of its numerous members shall I adopt? Shall I accept any one through courtesy, as an act of polite consideration? The ground is insufficient to justify my risking the life of another, were I willing to risk somewhat my own. Shall I take another's theory *ab auctoritate*, and let him do the thinking, while I am perhaps making it the knell of Duncan to some poor soul?

Am I to refrain from availing myself of my knowledge? Shall my patients be deprived of the possible benefit of any such knowledge? Is my action to be limited by the ignorance or prejudice of any individual, or any number of the members of the Massachusetts Medical Society? If it be thus controlled, where is my individual liberty? Of what avail is the action of the State, in chartering the Society for the purpose of securing the welfare of the public, but now employed to deprive the public of at least a part — and that not an insignificant one — of its protective resources?

Shall I not rather act as is the privilege, the prerogative, the imperative duty of every Fellow, self-respecting and conscious of his integrity of purpose; to wit, having given my early life to proper academic preparation, having been rewarded for my exertions as a student, general and professional, with the usual bachelor's and master's degrees, and the diploma of a doctor of medicine, all from the first university in the country, and then, having practised with diligent study and care, for more than thirty years, — with what success I leave others to tell, — shall I not assume to be myself, think my own thoughts, exercise my own liberty, and select for my suffering patient, that course which I consider the best for him? The Massachusetts Medical Society said in 1838, that it considered me "*virum vitæ integerrimum, artisquæ medendi peritissimum, et omnibus honoribus et privilegiis societatis dignissimum*"; and now in 1873, because after so many years of study and labor, I prefer homœopathy, not excluding, nor refusing to admit the force of anything that can be shown to be true, or wise, or efficient to promote the good of the sick, because I admit a truth to an unprejudiced observer clearly demonstrable, it accuses me of unworthy conduct!

If a member of the Society believe and practise upon the expectant theory, is he not liable to a similar charge? If he select two or more of the numerous theories, is he not eclectic? Can either be a worthy *Socius*? How far shall this questioning be carried? By whom shall it be instituted? And who is bound to answer?

In 1846, a few members of this Society became possessed of an item of medical knowledge to which they called the attention of their associates, and, for so doing, received the thanks to which they were entitled. They followed the dictates of common-sense, and gave currency to ether.

Previous to that date, a Fellow of this Society had learned, and since the date, others have become acquainted with valuable knowledge to which they have constantly invited the attention of their associates in this Society. But they have reason to complain that, not only have their urgent requests been disregarded, but that they find themselves arraigned as unworthy, at the instance of persons who either have not conducted investigation properly, or who have not been favored with results so satisfactory in number and importance as have been reached by the accused; a condition of facts susceptible, perhaps, of change by time and a more exact experimentation. If homœopathy has not resulted well in their hands, it has in those of others, for Dr. Gregg treated nineteen hundred patients homœopathically in one year, with only nine\* deaths.

And yet, why were the Fellows who consented to employ an agent which was kept secret from the profession by him who first brought it forward as an anæsthetic, honored for their conduct, while those who have presented and urged upon their associates a system of therapeutics of so great value, despite its necessarily imperfect development,—a system which is neither secret nor unworthy their attention,—why are these men thus peculiarly assailed?

If you say that the Society is aiming at the protection of the people from ignorance and knavery, at least take some pains to ascertain whether your Fellows who practise homœopathy (and this is the only offence) may not have some knowledge not common to all its members, and may not be able to give a satisfactory reason for the faith that is in them, ere you proceed, merely for a difference of opinion on therapeutics, to denounce them,—a fact not especially novel in professional history.

Will the Massachusetts Medical Society assume to say to its Fellows, you may think and believe thus, but you shall not think and believe otherwise?

There is in the possession of the Massachusetts Medical Society no standard of judgment, within my knowledge. There is no board elected or appointed, as I have ever heard, who are *ex officio* judges of truth; who possess the ability to declare, *a priori*, and, without examination, a new idea or proposition true or false. On the contrary, each Fellow is bound to examine a new claim to truth, every aid possible being rendered by the Society; and he should have the liberty to form and enjoy his own opinion, and

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\* Erroneously stated at *four* through misunderstanding a remark of Dr. Gregg himself.

demonstrate the propriety, as well as sincerity of his belief, in the midst of the largest charity.

In other words, the right of private judgment should be, nay, must be, absolutely beyond question, impairment, or assault.

If it be so, you may have the entire medical mind of the State honestly, laboriously, courageously, and harmoniously devoted to the development of all departments of the profession; you shall have a Jackson patiently breathing the foul air of the dead-room, while studying pathology, a Garratt growing pale in his efforts to compel electricity to restore the suffering and prostrate, a Lewis cheerfully leading the future surgeons in the anatomical elements, while you encourage a host to increase the knowledge subservient to human welfare.

But if this right of a man's mind to its own exercises and its own conclusions be denied or infringed upon, the members of this Society will either be prevented from investigation, or will enter upon and pursue it with fear and suspicion; or else they will, with resolute courage, go forward in the work, determined to know at any hazard, and bidding defiance to all that the Society can do.

The gentleman acting as prosecutor at the first meeting of the Board of Trial, charitably waived the opportunity of figuratively copying the example of Her Majesty Queen Victoria, treating the accused as she did her disobedient son. We have no thanks to return for a charity extorted only by a public opinion in advance of the times of John Huss and Archbishop Cranmer, and take the liberty to suggest that as King John was compelled by the Barons to refrain from wrong doing, even so may any body of men who trample on the rights of others at the present day, be brought to a position more ignominious still.

If the Society shall encourage its members to perfect themselves for their duties by every possible means, it will accomplish the purpose of its existence; but if, by a narrow policy, it discourage or repress investigation, or denounce and attempt to dishonor its Fellows for honest and inevitable differences of opinion, it will fail of its object, outrage confiding humanity, and be guilty of treason to the State; nay more, it will, by assuming that nothing new of truth can be presented for its consideration, declare itself the sole custodian of all knowledge, and usurp the place of Divine Wisdom itself.

I am also accused of "conduct unbecoming and unworthy an honorable physician and member of this Society," in "belonging to a society whose purpose is at variance with the principles of, and tends to disorganize, the Massachusetts Medical Society."

This accusation lies against me as a member of the Massachusetts Homœopathic Medical Society.

If I am asked whether I am a member of that Society, I shall very cheerfully respond in the affirmative. But if I am accused of

belonging to a society with a purpose at variance with that of the Massachusetts Medical Society, I must answer in the negative.

How are "purpose" and "principles" to be contrasted?

What did Massachusetts intend to accomplish, when it chartered the Massachusetts Medical Society?

The preamble of the charter reads thus:—

"As health is essentially necessary to the happiness of society, and as its preservation or recovery is closely connected with the knowledge of the animal economy and of the properties and effects of medicines; and as the benefits of medical institutions, founded on liberal principles and encouraged by the patronage of the law, is universally acknowledged,—The Fellows and their successors shall be and continue forever a body politic and corporate, by the name of the Massachusetts Medical Society."

The consideration of this preamble and of the charter, leads me to believe that the State intended to create an instrument, that should efficiently aid in the preservation or recovery of the public health, that the industrial and military resources should be kept at their maximum, in this respect, and the greatest comfort of the individual citizen be secured.

The Society commencing its existence ninety years ago, has doubtless striven to fulfil this purpose.

A few years ago Massachusetts gave a charter to another Society, made up at the time largely of Fellows of the Massachusetts Medical Society, under the name of the Massachusetts Homœopathic Medical Society.

The purpose of the new organization is, like that of the old one, the preservation or recovery of the public health. Each Society is endowed with similar powers, and, as far as I know, similar privileges.

At the annual meeting of the Massachusetts Homœopathic Medical Society, April 13, 1864, the President, Daniel Holt, M.D., of Lowell, in his address to the Society, said:—

"The object of our Society is one of the highest importance. It is not to favor any party interests or exclusive doctrines, which are to be engrafted upon our profession; but its aim is the promotion of medical science in its highest degree of perfection. It is our object more especially to apply to the healing art a creed of nature, whereby the relation between the pathological condition and the therapeutic means of cure, are brought into exact relationship; and by this simple and direct means, to effect a cure, in a speedy, mild, and efficient manner."

The Massachusetts Homœopathic Medical Society believes that it has a vital principle as its base. It has good reasons for its faith. It sees triumphs over disease, the most brilliant, achieved constantly under the guidance of this principle, and a revolution in the medical history of the country, productive only of good, to which this principle is contributing its full quota. What principle or purpose of the old Society is here interfered with, or in any way



thwarted? What are the principles of the Massachusetts Medical Society, distinctive and peculiar? Ethics are about the same among all right-minded men. If there be a difference between these Societies, it must be on intellectual grounds. The difference lies in the department of therapeutics, and involves no necessity of hostility between the parties.

The Fellows of the Massachusetts Medical Society are certainly entitled to claim the faith of the public, in the assertion of the Society concerning them, — that they are “*artis medendi peritissimi*.” By their connection with the Massachusetts Homœopathic Medical Society, they signify to each other and the world their confidence in an additional department of knowledge. They make no war. They simply ask for investigation. They do not seek the destruction of the Massachusetts Medical Society.

They had an undisputed, an indisputable right, moral and legal, to associate themselves together for the purpose of the charter, and have a chartered right to invite men of similar views to join their organization. Such a course is in keeping with the policy of the State, — to foster all knowledge likely to be of public value. The Society will, with reason, expect the protection and support of the power that authorized it.

Each of these Societies owes it to the State, to promote the enlightenment and consequent usefulness of its members. Neither can extinguish the other. As to the disorganization of the old society by the new one, I can only say, that I do not remember hearing such a sentiment advanced since the formation of the latter, and I believe that the hearty desire of the Fellows of the Massachusetts Homœopathic Medical Society is for the removal of the indisposition to examine their position, and the mistaken antagonism of their associates in the Massachusetts Medical Society.

But, it is practically said, if there be no actually hostile effort, there is such dissimilarity, such incompatibility, as to make a genuine peace impossible, and hence it is the duty of the homœopaths to withdraw from the other Society.

The Massachusetts Medical Society, in attacking its accused members, is merely repeating the experiment of King Canute in forbidding the advance of the tide. It may succeed in removing their names from the catalogue, but will it have abolished the cause of difference?

What is this cause? A law of nature. We assert that the incompatibility, if such it may be termed, grows out of the fact that one man sees what another does not. But we deny that there is any consequent necessity for us to resign.

What is it to resign? Such heretofore — and until a late period — has been the legislation of the State and of the Massachusetts Medical Society, as to cause any physician residing in the State

without a membership in the Society, to be considered an "*irregular practitioner*," and excluded, by enactments of the Society, from an equality with its members. Dupuytren, Lisfranc, Roux, Armstrong, Sir Astley Cooper, — all, had they been here, would, not many years ago, have been considered, so far as a consultation with a member of the Massachusetts Medical Society is concerned, irregular practitioners, and hence not worthy of meeting the Fellows of the Society in this important part of our duty. I see that now there is a circuitous route by which a Fellow can travel half-way or more around this enactment. This position of irregular practitioner — the rightful standing of an ignorant pretender — cannot be considered an agreeable one by any educated physician. However consonant it may be with the view of the Society, it is clearly discordant with the later policy of the State.

This degraded position I am invited to assume. Why? Is it because that, in accordance with duty to myself and the public, I investigated homœopathy? Is it because I gave facts their due weight and consideration, and, by an inexorable logic, was driven to an unavoidable conclusion? Is it because that, having learned better processes of treatment, I gave my patients the benefit of that knowledge, and thus contributed my mite to the public good? Or, should I resign because my associates have not, thus far, as a body, arrived at the same conclusions?

In the introduction of new ideas in any department of life, do all men at the same instant accept the novelty? How long has it taken Christianity to gain not more than half the world, even nominally? What amount of training, for what length of time, was necessary to teach this people to "undo the heavy burdens and let the oppressed go free"? And is he who accepts a truth clearly shown to him, to forget that a mass of minds will of necessity require time, ere they occupy his position? Opportunities for observation, the overcoming of prejudice and pride of opinion, the reconciliation of old and new views on the one hand — the conflict of interests, and the possible loss or alienation of friends on the other, — these and numberless other influences, are to be taken into account. The man who dares believe when he hears the announcement, is of course earlier in the faith than he can be who has not yet heard it; and the pioneer must be content to wait until he shall be joined by converts. But in matters like medicine, where doubt underlies the entire system, and the truth accepted by him is itself challenged, he need be in no haste to separate from associates and friends of acknowledged mental and moral excellence. He has no call, as a member of the Massachusetts Medical Society, to assume the position of "*irregular practitioner*," neither ought he (after learning his profession twice, as does every allopathic physician who learns homœopathy) to be required so to do. Such a course is calculated to provoke a warfare, boding no

good to the Massachusetts Medical Society, how much injury soever it may momentarily inflict on the assailed. The world is full of the consequences of such lack of wisdom.

In conclusion, permit me to say, that this Board of Trial, the possible appellate Conncillors' court, the Massachusetts Medical Society itself, is not the authority that will really decide the questions at issue. A higher power will say whether it will approve or condemn progress in medical science, whether it will encourage or repress investigation looking to that end, whether it will uphold freedom of thought and freedom of speech, and what it may deem the proper position of those who fear not what man can do, but fear God alone; this power is the people of the Commonwealth of Massachusetts; their enlightened and deliberate verdict I can patiently await.

## DR. THAYER'S DEFENCE.

Dr. Thayer spoke especially in behalf of himself and Dr. Milton Fuller.

MR. CHAIRMAN AND GENTLEMEN OF THE BOARD OF TRIAL:—

In addressing myself to the defence which I find myself here to make, against certain charges brought by a Committee of the Massachusetts Medical Society, it seems proper that I should first rehearse those charges in your hearing. They are as follows, viz:—

NORTHAMPTON, MASS., NOV. 4, 1871.

TO DAVID THAYER, M. D.:

SIR—Charges having been preferred against you by a committee of the Massachusetts Medical Society of "Conduct unbecoming and unworthy an honorable physician and member of this Society," *to wit*: "by practising or professing to practise according to an exclusive theory or dogma, and by belonging to a Society whose purpose is at variance with the principles of, and tends to disorganize, the Massachusetts Medical Society,"—

You are hereby directed to appear before a Board of Trial at the Society's Rooms, No. 36 Temple place, Perkins Building, on Tuesday, November 21, 1871, at 11 o'clock, A. M., to answer to the same, in accordance with by-laws and instructions of the Society.

SAMUEL A. FISK,

*President of the Massachusetts Medical Society.*

I pass by the insult implied in the phrase "*professing to practise*." It is of a piece with many other things in this trial. It requires no notice, and is wholly unworthy of gentlemen representing our venerable Society and members of an honorable profession. The substance of the charge is that in practising on the homœopathic system and in joining the Homœopathic Society I have been guilty of conduct inconsistent with my duty as a member of the Massachusetts Medical Society.

What is the nature and object of that Society? Its charter provides in its preamble that those physicians who are educated and qualified to practise physic may be distinguished from those who ignorantly and wickedly administer medicines. The object of the Society is apparent from this preamble. That object is to bring educated physicians together for mutual support, consultation, and recognition. The Society proposes to marshal in its ranks all those physicians who have submitted to a thorough and sufficient education and preparation before assuming the responsibilities of the profession. The object of the Society is to distinguish such men from the presumptuous and ignorant quack who, without training or study, administers drugs of which he knows nothing, and the use of which in disease is fraught with danger to health and life. The Society prescribes no method or system of medicine, no rule of practice; neither does it forbid any. It indorses neither allopathy nor homœopathy nor antipathy nor hydropathy. It neither denies nor affirms Cullen's theory of fever, nor Todd's. It does not make belief in Bigelow's notion of self-limited diseases a condi-



tion of membership; neither would it expel old Dr. Shattuck or Strong, or any of our old heroic practitioners, were they alive, because they did not accept Holmes' idea of a good physician; viz., to watch your patient carefully, but trouble and endanger him with as little medicine as possible. On all such points it is silent. It only demands that its members shall be men who have faithfully weighed and examined all systems; men of trained minds, competent to form a judgment on such questions, men of such education, skill, and experience as justify them in assuming the care of the sick. It runs no line between this system or that. The line that it intends to draw is one that shall separate education from ignorance, the man of careful and honest training from the charlatan and the quack. Inside of this line it leaves every one of its members entirely free to exercise the healing art according to his own best judgment. All systems and theories are free to all. They may and do practise, some on one principle and some on another, while many follow no principle or theory, but are guided entirely by experience, — and no one objects or has any right to object. All may give large doses of medicine or small ones, or none at all. Many use all the means known to the art of healing — ponderable bodies and imponderable agencies, all the various uses of water — hot and cold, — electricity and galvanism, Perkinsism and animal magnetism, and whatever else that is known or to be known.

All that our Society undertakes to secure is that its members shall be men sufficiently educated to be competent to decide between rival theories, and of such good judgment that their course shall honor the profession, and serve the public health. If I am not correct in this statement of the purposes of this Society, please, gentlemen, open its records and show me where it states what particular system it *does* sanction. Please to show us in the by-laws or charter of the Society any indorsement of any system of practice. You cannot do it, for it is not there. As Dr. Luther Parks, the Chairman of the Prosecuting Committee, said in the beginning of these trials, "We have no system; every one is entirely free to do as he pleases." "In this room," said he, "the doctors used to contend with old Dr. Strong against his enormous doses; but no one could deny his right to do just as he pleased, and every one had the same right." Various and numerous have been the theories believed in, practised on and promulgated in this Society. Even Perkinsism was allowed and practised in this Society, within the last century. It went out of use, not by summoning its votaries before this tribunal: that might have prolonged its use. Perkinsism and Astrology might be used in the Massachusetts Medical Society to-day, and undisturbed, so long as it was unsuccessful, and the large fees did not find their way into the pockets of the astrologers and tractorators. The learned and witty Dr. O. W. Holmes ridicules the efficacy of nine tenths of all the drugs which the founders of this Society used, and, excepting one or two, he considers all drugs

injurious, — is sure mankind would be healthier if drugs had never been discovered, and is not quite sure the same would not have been the case had physicians never appeared. You remember his saying: "If all the medicines were thrown into the sea it would be all the better for mankind, but all the worse for the fishes." Is this treason to the Massachusetts Medical Society? If we are justly accused, what of Dr. Holmes? Does any one propose to arraign him as undermining the very foundations of this Society? Why not, if the theory on which we are accused be correct?

Now, gentlemen, if my representation of the Society be correct, why are we arraigned? Educated we certainly are to the Society's content; otherwise we should never have been admitted. Besides, we can point to as many years of faithful study and practice as you can. How, then, have we violated our duties since? Have we ludicrously failed in grappling with disease? Have we sported with the lives of our patients? Have we deluded the ignorant classes to their hurt, extorting fees and rendering nothing in return? Have we disgraced the Society by parading a notion of medicine that no sane man would countenance, which trifles with human life and brings contempt on the profession? Gentlemen, on all these points we are willing to measure ourselves with you. Your system has had possession of the Commonwealth for two centuries. Ours has been known here not quite forty years. Making fair allowance for time, we have as many families trusted to our care as you have. And our patients are not the careless, the ignorant, the needy, who must take what they can get, or the reckless, carried away by every new whim. No; we count among our patients the rich, who have tried every clime for health, every city for medical skill, every theory for efficient help; we have the foremost men at the bar, in the pulpit, on the exchange. In intelligence, social position, and world-wide culture, the men and women who trust their lives to us may be fairly measured with any who consult you. On this point we have done the Society no dishonor.

But, second, have we failed to help these friends? Have we been found wanting in severe disease? Forty years is sufficient time for trial. The evidence that they find us efficient helpers is that they continue to trust us.

Third: But is our method empiricism and quackery? Who is authorized to say that of a system which two generations of the best educated men in this country and in Europe continue to trust; which the foremost governments of Europe recognize; which has its hospitals, both city and national, all over the world; which dares to compare its success in curing disease with the best of you? If world-wide recognition, unequalled success in curing disease, and the confidence of the most enlightened classes here and in Europe do not lift a system into sufficient character to prevent its use disgracing this Society, please describe to us, gentlemen, what evidence of usefulness you do demand?

Again, gentlemen, other members of the Massachusetts Medical Society have organized themselves into other societies for the cultivation of medicine and for special purposes, just as the homœopaths have done. The Gynæcological Society, whose blatant and noisy members have done so much to disturb the harmony of this Society, has for its object the study of the diseases of women. Yet no one of them has been arraigned here. Why not? Is it because they have no principle or system? But we who have a system, and practise in accordance with it, are called to answer for it. The object of the Massachusetts Homœopathic Medical Society is the culture of medicine according to a law of nature, which law is recognized (ignorantly perhaps) even in the Massachusetts Medical Society.

This law is expressed by the formula of Hahnemann — “*Similia similibus curantur.*” Hippocrates acknowledged the truth of this law, and Hufeland sent some patients, whom he could not cure, to consult Dr. Hahnemann. Why do you apply snow to a frozen part, and distant heat to a burn? These practices are traditional, and are used empirically by the members of the Massachusetts Medical Society, never thinking that this is homœopathy of the rankest kind. There are many other instances in which you cure diseases homœopathically without once dreaming that you are guilty of trenching on the domain of homœopathy. One of these is the use of purgatives in affections of the bowels, and thus hundreds are killed every year in this city by your heroic and dangerous doses. If the allopaths would follow out and profit by the experience of the homœopaths, and give their minute doses, the results would show them the superiority of the latter over the former. They have lately learned that minute doses of ipecacuanha will cure nausea and vomiting, while they have given the large doses of that drug for a century — first increasing vomiting and thereby curing it — on the homœopathic principle, to be sure; but so “ignorantly and wickedly” applied, that great mischief is often done thereby. But some wise observer among them has discovered that very minute doses of ipecacuanha will cure nausea and vomiting in a more prompt and satisfactory manner. This astonishing discovery is explained, they think, by the bold statement that ipecacuanha is a tonic! How cunningly they avoid the homœopathic law — “*Similia similibus curantur!*”

There are many other instances of the same nature which might be stated, showing that the members of the Massachusetts Medical Society for years have blundered along the road towards homœopathy; but if told of it, the learned reply is, “Homœopathy is a humbug,” and that is the end of it. The motto on the seal of the Massachusetts Homœopathic Medical Society is “*Certiores mendum usum maluit.*” This motto expresses the meaning and the aspirations of thousands of earnest homœopaths in this country — “to make the art of healing more certain.”

If it be proved that the Massachusetts Homœopathic Medical Society has done something to benefit science and to aid in the cure of disease and to make medicine a more certain science, then I boldly assert that, instead of tending to disorganize the Massachusetts Medical Society, the tendency is rather to benefit and to aid that ancient corporation, and to put it on a higher plane of observation. Any member of the Massachusetts Medical Society, should he become so far enlightened as to perceive that there is truth in the direction of homœopathy, could join the Massachusetts Homœopathic Medical Society by avowing a desire to learn homœopathy.

But leaving general statements, I propose to show you in detail that homœopathy is not what Dr. Luther Parks declared it to be,—a fraud, an imposition, “like the little joker, sometimes here and sometimes there,” but that it is a useful and beneficent system of medicine, as true as any law known to physics. In order to make this clear I must state to you something which homœopathy has done. In the report made to the Massachusetts Medical Society, twenty-three years ago, Dr. Geo. Hayward, Dr. Oliver W. Holmes, and Dr. J. B. S. Jackson said that homœopathy had done much good by teaching us that a great deal less medicine will do just as well,—(I quote from memory). Has any other special theory of medicine in your books or system of practice lived so long as homœopathy has—more than three-quarters of a century? and is it not still fast gaining in favor with the best and most intelligent of the people? Homœopathy *has* done some good.

There are cures made every day by homœopathy which would astonish the whole medical world if they were known and understood. In the cure of diarrhœa of adults in New England nothing can surpass the efficacy of this little white powder. It is sweet to the taste, inodorous, and I doubt if your chemistry can detect even a trace of medicine in it. It contains only one-millionth part of a grain of the drug in each grain, yet it cures with astonishing quickness—*tute, cito, et jucunde*. But even this medicine is too strong for the enteritis of infants, and if given will endanger life.

Dr. Jacob Bigelow says that syphilis is not a self-limited disease; by which he means to say that the patient will never spontaneously recover. If that is true, then I am able to demonstrate the efficacy of homœopathic medicine in that terrible disease. This little vial contains also a white, sweet, and inodorous powder—just one ten-thousandth part of it is medicine, the rest is sugar of milk. For the primary chancre I always give a small dose of this powder two or three times a day for one week. The sore will always look worse at the end of that time. I then give it only once or twice a day. When improvement is visible I give the medicine less frequently, and the patient is cured. Sometimes the young homœopathist will be impatient as the chancre looks worse, and will be tempted to make some local application, especially if he has



been graduated at an allopathic college. But let him wait, and his faith and works will be rewarded. No application to the chancre itself should be made, further than to keep it clean; and this little white and harmless powder will effect a cure without secondary symptoms. I am able to assure you, Mr. Chairman and gentlemen of the Board of Trial, that it is a very rare circumstance that one of my cases has ever developed secondary symptoms. This powder contains only one ten-thousandth part of the drug, while the other 9,999 parts are nothing but sugar of milk. This medicine has been ground four hours in a mortar. Dr. Jacob Bigelow says this disease is not self-curable. Then I ask you what cures these cases? If this homœopathic drug does not do it, please tell us what does? Or is Dr. Bigelow mistaken? Or am I mistaken? Very strange I should not know the disease after the study and practice of medicine more than a third of a century, and living in a city where it is very common.

One or two more illustrations and I will not tire you with a fourth. The disease known as gall-stone, you, Mr. Chairman, none of you, gentlemen, members of the Massachusetts Medical Society, can cure. Not one of you ever pretended to have attained to that knowledge; yet nothing is easier. The gallstone colic is easily recognized. Your only remedy is opiates, hypodermic injections, the inhalation of ether, or some other narcotic to allay the sufferings of the patient, and perhaps an aperient to hasten the discharge of the gall-stone. This is the best you know—the best you can do. In the winter of 1854–55 the discovery was made that gall-stone colic can be cured, radically cured. By the radical cure of gall-stone colic is meant that change in the system which prevents the recurrence of the malady. The remedy I hold in my hand. It is in these small, round pellets of sugar. They have been slightly moistened by a solution containing only one-millionth part of the drug and 999,999 parts of alcohol and water. This bilious colic is caused by the lodgment of a calculus in the duct of the gall-bladder too small for its easy passage, or by other biliary obstructions. It is apt to recur every two or three weeks, once a month, and sometimes after longer intervals. One of its strong characteristics is periodicity. The remedy which I have exhibited has periodicity for one of its characteristics as well as a special affinity for the gall-bladder. It is now more than nineteen years since the value of this remedy came to my knowledge, and from that time to this it has not in a single instance failed to prevent the recurrence of the disease. I usually give six of these little pillets twice a day till ten doses are taken, then once a day till ten doses are taken, then every other day till ten doses are taken, etc., etc., till at length they are taken only once a month. In the last nineteen years I have treated hundreds of cases, from all parts of the continent, and without a single failure.

There are many other diseases, the remedies for which are equally reliable and well known to the accused. Can any of you gentlemen cure organic disease of the heart? Every member of our Society can. Are any of you able to tell us the remedy for rachitis infantum? We can tell you, for we have not failed once in more than twelve years. And we don't use any iron-braces, nor any mechanical appliances whatever, only some of those little sugar pills, moistened with a solution of a drug, only one-millionth part of which is medicine, and 999,999 parts of which are alcohol and water — nothing else.

We are indicted for belonging to a Society which teaches these things, and for practising homœopathy, by means of which cures are made of diseases which those unacquainted with homœopathy would pronounce incurable. Is this "*conduct unworthy and unbecoming an honorable physician*"? And does it "tend to disorganize the Massachusetts Medical Society"?

If you don't believe these statements, we will obtain permission to refer you to the persons who have been cured of these (incurable?) diseases, who are only too grateful to homœopathy not to be willing to tell you the truth? We may perhaps be permitted to refer you to the members of the Massachusetts Medical Society, who pronounced those cases incurable.

You charge us, gentlemen, with attempting to disorganize the Massachusetts Medical Society. Your only evidence is, that we have joined another society and practise homœopathy. I invite you, gentlemen, to show us how either of these acts tends to disorganize the Massachusetts Medical Society. You have not offered one tittle of evidence. On the contrary, I offer you the evidence of any and all of the accused, or any other members of our Homœopathic Society. They have told you that they never heard a word uttered, or knew of a plan laid to weaken your Society. But, on the contrary, that we have always cherished its welfare and sought its usefulness, and we have annually paid our dues.

Now, gentlemen, let me ask you: Is there any by-law or rule in your Society which forbids its members from investigating homœopathy? If not, suppose you take the lead and examine it. I have no doubt, if you will do so, you will all become homœopaths. For I can say, as has been often said, I never knew a scientific man to fairly examine it who did not believe in it. Now, gentlemen, I make you this proposition, that at the next annual meeting of the Massachusetts Medical Society, in June next, you ask that a committee be appointed — one from each County in the State — or, if you prefer, one from each town and ward of the cities, to investigate the claims and pretensions of homœopathy, with instructions to report at the next annual meeting. I pledge you, gentlemen, that we will aid you all in our power. Every facility shall be given you that can aid your inquiries.

## DECISION OF THE BOARD OF TRIAL.

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The undersigned, having been appointed a Board of Trial for the purpose of trying William Bushnell, Milton Fuller, H. L. H. Hoffendahl, George Russell, I. T. Talbot, David Thayer, Benjamin H. West, upon the foregoing charges and specifications, met the several parties charged on the 29th day of April, A. D. 1873, and by adjournment on other days between the said 29th April and the date hereof, and heard the evidence adduced in support of said charges, and heard the said several defendants, all of whom were personally present, and their evidence, averments and arguments in answer to said charges and specifications, and the parties having been fully heard, and the evidence and arguments on each side fully considered, we do find and determine that the said charges and specifications are all fully proved against each of said accused persons, and they are severally guilty of the charges aforesaid, and we therefore adjudge and determine that the said William Bushnell, Milton Fuller, H. L. H. Hoffendahl, George Russell, I. T. Talbot, David Thayer, Benjamin H. West, be therefore expelled from their membership of the Massachusetts Medical Society, and report this our determination to the Massachusetts Medical Society at its annual meeting, for such action thereupon as to the Society may seem fit.

(Signed) JEREMIAH SPOFFORD,  
AUGUSTUS TORREY,  
GEORGE HAYWARD,  
FREDERICK WINSOR.

Being a majority of the Board of Trial.

Dated May 19, 1873.

A true copy.

CHAS. W. SWAN,  
*Secretary Board of Trial.*

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MEMBERS OF THE MASSACHUSETTS MEDICAL SOCIETY:—

*THE RESPONSIBILITY, IN THIS MATTER, NOW RESTS ON YOU.*





# TRIAL

OF

( WILLIAM BUSHNELL, M.D., MILTON FULLER, M.D.,  
SAMUEL GREGG, M.D., H. L. H. HOFFENDAHL, M.D.,  
GEORGE RUSSELL, M.D., I. T. TALBOT, M.D.,  
DAVID THAYER, M.D., and BENJ. H. WEST, M.D.,

ALL OF BOSTON,

## FOR PRACTISING HOMŒOPATHY,

WHILE THEY WERE MEMBERS OF THE

MASSACHUSETTS MEDICAL SOCIETY,

BEFORE

JEREMIAH SPOFFORD, M.D. . . . . OF GROVELAND.  
AUGUSTUS TORREY, M.D. . . . . OF BEVERLY.  
GEORGE HAYWARD, M.D. . . . . OF BOSTON.  
FREDERIC WINSOR, M.D. . . . . OF WINCHESTER.  
FRANCIS C GREENE, M.D. . . . . OF EASTHAMPTON.

ON THE COMPLAINT OF

LUTHER PARKS, M.D. . . . . OF BOSTON.  
R. L. HODGDON, M.D. . . . . OF ARLINGTON.  
THOMAS L. GAGE, M.D. . . . . OF WORCESTER.  
ASA MILLET, M.D. . . . . OF BRIDGEWATER.  
BENJAMIN B. BREED, M.D. . . . . OF LYNN

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The Examination and Consideration of the Fellows of the Massachusetts Medical Society.

BOSTON, MAY, 1873.

